

December 20, 2020

Contract #20-201

Agenda Action Report
prepared for the
Cascade County Commission

ITEM:

**Modification #5 to DPPHS Contract 20027210050
USDA Commodities Supplemental Food Program to
accept additional funding from Governor's CARES
Act to assist with COVID19 response**

ACTION REQUESTED:

Approval Contract #20-201

PRESENTED BY:

Kim Thiel-Schaaf, Aging Services Director

SYNOPSIS:

The Area VIII Agency on Aging provides the USDA Commodities Supplemental Food Program under a contract for service with the Montana Department of Public Health and Human Services Intergovernmental Services Bureau (DPHHS). The program provides supplemental foods to seniors aged 60 and older who are low income as a dietary supplement that reduces food insecurity. The program operates in all areas of Cascade County. DPHHS notified Aging Services that we would be receiving \$43,000 of the Governor's CARES Act funding to provide logistical assistance to the program due to increased costs and demands associated with provision of the program during the COVID19 pandemic. The funds are being provided via Modification #5 to the FFY19 Contract 20027210050 (Ref Contract 19-179)

Cascade County Aging Services has continued to provide essential services via transportation, nutrition, and homemaker services throughout the coronavirus pandemic. The funds that are the subject of this modification will allow Aging Services to purchase a larger utility vehicle to transport commodities into the outlying areas of Cascade County more efficiently. Presently, we take 2 and sometimes 3 trips at over 100 miles in some cases to get all the boxes distributed due to the smaller SUVs in the County Fleet. The purchase of this vehicle meets the criteria established by DPHHS.

RECOMMENDATION:

Approval of Contract #20-201

TWO MOTIONS PROVIDED FOR CONSIDERATION:

MOTION TO APPROVE: Mr. Chair, I move that the Commissioners **APPROVE** Contract #20-201, Modification to DPHHS Contract 20027210050 to accept CARES Act Funds in the total amount of \$43,000 to provide COVID19 response within Aging Services.

MOTION TO DISAPPROVE: Mr. Chair, I move that the Commissioners **DISAPPROVE** Contract #20-201, DPHHS Contract 20027210050 to accept CARES Act Funds in the total amount of \$43,000 to provide COVID19 response within Aging Services.

**CONTRACT AMENDMENT NO. 5
CONTRACT FOR CSFP
CONTRACT # 20027210050**

This CONTRACT AMENDMENT is to amend the above-referenced contract between the State of Montana, Human and Community Services Division (STATE), whose address, phone number and Fax are 1500 N. 6th Street, Helena, MT, 59601, Phone (406) 444-0640, Fax (406) 406-444-2547 and Area VIII Agency on Aging, (CONTRACTOR), whose address and phone number are 1801 Benefis Court, Great Falls, MT 59405, (406) 454-6990. This Contract is amended for the following purpose(s):

SECTION 2. TERM OF CONTRACT, will be amended as follows:

The term of this Contract is as follows:

1. CSFP funding is from October 1, 2019 through September 30, 2020
2. CARES Act funding is from March 1, 2020 through December 30, 2020

Renewals of this Contract, by written agreement of the parties, may be made at one-year intervals, or any interval that is agreed upon by both parties.

SECTION 3. CONSIDERATION AND PAYMENTS

Subsection B. Billing Procedures and Requirements will be amended as follows:

The Department will reimburse an amount not to exceed \$70,492 broken down as follows:

1. \$27,492 for CSFP under Continuing Resolutions 1 through 6 for the term October 1, 2019 through September 30, 2020.
2. \$43,000 for CARES Act funding for the term of March 1, 2020 through December 30, 2020.

A final invoice and the final Expenditure Report for CSFP along any unexpended funds is due by November 30, 2020. A final invoice and the final Interim Report, (Attachment C) for the CARES Act along with any unexpended funds is due by January 31, 2021.

Subsection D. Sources of Funding will be amended as follows:

The source of the funding for this contract is \$27,492 from USDA, Grant Award Document Number 3MT810815, and \$43,000 from the Coronavirus Relief Fund (a.k.a. CARES Act), CFDA# 21.019.

This agreement is entered into pursuant to funding made available under section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). The CARES Act established the Coronavirus Relief Fund (the "Fund") and appropriated \$150 billion to the Fund. Under the CARES Act, the State of Montana is tasked with distributing payments for necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19).

SECTION 11. COMPLIANCE WITH LAWS/WARRANTIES will be amended as follows:

Subsection H.6. Total amount of funds obligated with this action: **\$43,000**
Subsection H.7. Amount of funds obligated to sub recipient: **\$70,492**
Subsection H.8. Total amount of the federal award: **\$70,492**

This amendment consists of 2 numbered pages, Attachment A: Caseload Assignments, Attachment B: Scope of Work and Attachment C: Interim Report which are hereby incorporated into this contract. Except as modified above, all other terms and conditions of Contract 20027210050 remain unchanged.

STATE OF MONTANA
HUMAN AND COMMUNITY SERVICES DIVISION
111 N. JACKSON
HELENA, MT 59620-2925

AREA VIII AGENCY ON AGING
1801 BENEFIS COURT
GREAT FALLS, MT 59405
TAX ID #81-6001343

BY: <u>Gene Hermanson</u> HCSD Administrator	BY: <u>Kimerliegh Theil-Schaaf</u> Area VIII Agency Director
(Name/Title)	(Name/Title)
<div>DocuSigned by: <u>Gene Hermanson</u> F7007016CD0A496...</div>	<div>DocuSigned by: <u>Kimerliegh Theil-Schaaf</u> 1D655BD688774A3...</div>
Signature	Signature
<u>12/11/2020</u>	<u>12/9/2020</u>
Date	Date

ATTACHMENT A
CASELOAD ASSIGNMENTS

ATTACHMENT B
SCOPE OF WORK

ATTACHMENT C
INTERIM REPORT

CASELOAD ASSIGNMENTS FOR THE PERIOD Beginning July 1, 2020

This is the July 1, 2020 agency caseload slot assignment for Federal Fiscal Year 2020 CSFP contracts. Caseloads will be reassessed MONTH-BY-MONTH and new caseload assignments may be made throughout the remainder of FFY 2020.

AGENCY NAME		CASELOAD
AREA V AGENCY ON AGING - BUTTE		400
DISTRICT 9 HRDC-GVFB – BOZEMAN		320
N. CENTRAL AOA - CONRAD		215
ACTION FOR E. MONTANA - GLENDIVE		511
AREA VIII AOA-CASCADE CNTY-GREAT FALLS		430
HILL COUNTY COA - HAVRE		110
ROCKY MOUNTAIN DEV COUNCIL-HELENA		563
FLATHEAD FOOD BANK - KALISPELL		550
MISSOULA FOOD BANK - MISSOULA		650
AREA VI AOA - POLSON		842
AREA II AOA – ROUNDUP		1022
RAVALLI COUNTY COA - HAMILTON		252
Estimated CASELOAD:		5,865

REGULATIONS: Federal statutes (7 CFR 247.21) state a base caseload for the following year will be based on the average caseload issuance for the current calendar year or the average issuance for the last quarter of the federal fiscal year (July, August & September), whichever is highest; with the stipulation that base caseload may not exceed the assigned caseload of the current calendar year. Final caseload assignments are dependent on Congressional funding and Presidential signature of the Annual Agriculture Bill.

SCOPE OF WORK

1) PARTIES

This agreement is entered into between Applicant and the Montana Department of Health and Human Services (Grantor).

2) TERM

This agreement shall terminate January 31, 2021.

3) PURPOSE

This agreement is entered into pursuant to funding made available under section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). The CARES Act established the Coronavirus Relief Fund (the "Fund") and appropriated \$150 billion to the Fund. Under the CARES Act, the State of Montana is tasked with distributing payments for necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19).

The CFDA # assigned to the Fund is 21.019.

4) FUNDED ACTIVITIES

The Grantor may provide money to Applicant for the purposes stated in this agreement. Any use of funds for purposes not specified in this agreement is a breach of this agreement.

Applicant agrees to use the funds in a manner consistent with their application.

As approved, Applicant's proposed expenditures qualify as eligible support without risk of penalty or repayment.

Applicant shall not use any part of the funds as a match to obtain funding for any project unrelated to Applicant's application without the Grantor's written consent.

If Applicant's business or organization is dissolved, sold, or moved out of state within twelve (12) months of the original awarding of funding, Grantor may require all funding be returned.

Equipment purchased in excess of \$5,000 under the terms of this agreement may not be sold by Applicant within 12 months of January 31, 2021 without written permission by Grantor.

Ineligible Expenditures include:

- Property taxes
- Capital improvement projects that are not necessary expenditures incurred due to the COVID-19 public health emergency Lobbying or political purposes.
- Damages covered by insurance
- Expenses that have been or will be reimbursed under any federal program, such as the reimbursement by the federal government pursuant to the CARES Act of contributions by States to State unemployment funds.
- Reimbursement to donors for donated items or services
- Workforce bonuses other than hazard pay or overtime
- Severance pay
- Legal settlements

5) COMPENSATION

The Grantor agrees to provide Applicant direct funding assistance for eligible costs described in Applicant's application. Funds must be used for the approved purposes only and failure to properly document and account for fund expenditures constitutes breach of this agreement and may result in full repayment of grant including associated costs and fees. Applicant shall reimburse Grantor for any funds used for purposes not authorized by this agreement.

6) COMPLIANCE / REPORTING

Applicant shall provide the Grantor with a final activity and expenditure report as outlined in this section. Reporting is a critical requirement of this agreement and may be submitted at any time following expenditure of funding, but no later than January 31, 2021.

Applicant must comply with reporting requirements communicated by Grantor, and file a comprehensive final report no later than January 31, 2021. Reporting requirements will be posted at covidrelief.mt.gov (<http://covidrelief.mt.gov>). Applicant's failure to comply with reporting requirements constitutes breach of this agreement.

Final reporting shall include (1) a detailed financial report and any necessary supporting documentation certifying that all money granted has been used for the approved purposes and; (2) a summary of the project or event describing the impact of the funds.

Upon approval of complete and accurate reporting documents, Grantor warrants and ensures compliance with applicable federal oversight rules and regulations. Grantor will hold Applicant harmless for unavoidable business failures or other unforeseen losses arising as a result of the COVID-19 emergency up to the full amount of this agreement.

Failure to provide the required reports at the scheduled time constitutes a breach of this agreement.

7) GRANTOR LIAISON:

The liaison for Grantor is:

Montana Department of Health and Human Services
PO Box 4210
Helena, MT 59604
(406) 444-3130

8) LEGAL RELATIONSHIP BETWEEN THE PARTIES

This agreement does not create a partnership, joint venture, joint enterprise, or joint undertaking of any sort between Grantor and Applicant, its agents, employees, cooperators, subcontractors, or independent contractors.

9) ACCESS FOR MONITORING AND REVIEW

Applicant shall allow Grantor and its agents access at any reasonable time to the project sites, financial documents, and activity records pertaining to the grant so the Grantor may carry out any desired monitoring or review to determine compliance with this agreement.

Applicant agrees that Grantor or the Legislative Audit Division may, at any reasonable time, audit all records, reports, and other documents which Applicant maintains under or in the course of this agreement to ensure compliance with this agreement. In addition, the Grantor may require, with reasonable notice, Applicant to submit to an audit by a Certified Public Accountant or other person acceptable to the Grantor, paid for by Applicant.

10) FAILURE TO COMPLY

If Applicant fails to comply with the terms and conditions of this agreement, or reasonable directives or orders issued by the Grantor, the Grantor may terminate this agreement pursuant to the section entitled "Termination." In the event this agreement is terminated for failure to comply, Applicant shall report on results of the project to date. The Grantor reserves the right to seek additional reimbursement from Applicant if the Grantor determines that funds were improperly received, paid in error, or a material breach of the agreement has occurred.

11) TERMINATION

Grantor may terminate this agreement for failure of Applicant to perform in accordance with the terms of this agreement, after providing Applicant with written notice to Applicant, of the stated failure and an opportunity to cure the issue of nonperformance. The written notice must specify the performance failure and provide Applicant an opportunity to correct the failure within a specified period of time not less than 21 days. If the failure is not corrected within the specified period, or such other period as agreed upon by the parties in writing, the termination is effective at the end of the specified period.

Upon receiving a notice of termination of this agreement, Applicant shall immediately cease all activities under this agreement unless Grantor expressly directs otherwise in such notice of termination. Applicant will be reimbursed for all costs incurred in compliance with this agreement prior to the notice of termination.

12) MONTANA'S LAW AND VENUE

The parties mutually agree that any action at law, suit in equity, or judicial proceeding for the enforcement of this agreement or any provision thereof shall be instituted only in the courts of the state of Montana, and it is mutually agreed that this agreement shall be governed by the laws of the state of Montana, both as to interpretation and performance. In the event of litigation concerning the terms of this agreement, venue shall be in the First Judicial District in and for the County of Lewis and Clark, Montana.

13) ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

The parties mutually agree that there will be no assignment, transfer, or subcontracting of this agreement, nor any interest in this agreement, unless prior agreement has been stipulated elsewhere in this agreement or with the express written consent of both parties.

14) NON-DISCRIMINATION

Any hiring of employees or provisions of goods or services under this agreement by the Applicant shall be on the basis of merit and qualification, and there shall be no discrimination in such hiring on the basis of race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin, or ancestry. As used herein, "qualifications" means qualifications that are generally related to competent performance of the particular occupational task.

15) COMPLIANCE WITH LAWS

Applicant shall use all money provided in accordance with all applicable federal, state, and local laws and written standards of the Grantor. Applicant further agrees to abide by all applicable workers' compensation laws.

16) MODIFICATION AND PREVIOUS AGREEMENT

This agreement, Applicant's application, approval email, and program guidelines encompass the entire agreement between the parties, and no statements, promises or inducements made by either party or agents of either party, who are not contained in the writing, shall be valid or binding. This agreement shall not be enlarged, modified, or otherwise altered without written consent of both parties. The Grantor neither expressly nor impliedly warrants it will renew this agreement. Upon written request of Applicant, the Grantor may extend reporting deadlines.

17) INDEMNITY AND LIABILITY

Applicant shall protect, indemnify, defend, and save the State of Montana and its agents harmless from and against any and all claims, portions of claims, liabilities, demands, causes of actions, judgments, and settlements, including costs and reasonable attorneys' fees, arising in favor of or asserted by any person or entity based in whole or in part on any acts or omissions of the Applicant, its employees, agents, or independent contractors, in connection with the activities described in this agreement and attachments.

The duty of the Applicant to defend is not contingent upon an admission or jury determination that Applicant committed any negligent acts or engaged in any willful misconduct. Applicant shall pay the reasonable cost and attorneys' fees incurred by the Grantor in establishing its right to defense or indemnification.

18) SEVERABILITY

It is understood and agreed by the parties hereto that if any term or provision of this agreement is held to be illegal or in conflict with any state or federal law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this agreement did not contain the particular term or provision held to be invalid.

19) CONFIDENTIALITY AND PUBLIC DISCLOSURE

All information submitted to Grantor by Applicant, including, but not limited to, business name, location, amount requested, amount received, and use of funds shall be considered public information, except sensitive personally identifiable information and information such as driver's license, Social Security Number, and financial information, which will be protected from public disclosure.

20) AUTHORIZATION

A copy of the original has the same force and effect for all purposes as the original.

21) DISPUTE RESOLUTION

If any dispute arises under this agreement, the parties agree to attempt to resolve the dispute in good faith as follows:

- a. First, by informal negotiation between the Liaisons.
- b. If informal negotiations fail to resolve the dispute, the parties agree to seek mediation using a mediator acceptable to both parties.
- c. If mediation fails to resolve the dispute within sixty (60) days of initial mediation session, the parties may proceed to contested case hearing under the Montana Administrative Procedures Act.

Coronavirus Relief Funding: Food Bank and Food Pantry Grant Interim Report

Please complete Interim Report and submit by November 16, 2020.

It is critical that we receive this Interim Report from your organization in order to remain compliant with these federal funds and for us to work with you to ensure spend out of these funds by the end of the year.

Important Notes:

- The CFDA number for this source of funding is 21.019.
- Coronavirus Relief Fund grant awards must be expended no later than December 30, 2020.
- Expenses must be incurred during the period of March 1, 2020-December 30, 2020.
- In your accounting for these funds, please ensure that funded expenses aren't overlapping with other state and federal CARES ACT funding, such as Paycheck Protection Program expenditures.
- You are not required to submit copies of receipts for this Interim Report, but receipts may be requested as part of subrecipient monitoring at a later date.
- A Final Recipient Report will be due no later than January 30, 2021.
- Federal guidance on eligible expenses can be found here: <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf> (<https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf>)

Name of Business/Organization: *

Limit: 40 characters

Business/Organization EIN: *

SSN/EIN Example: 123456789

This report is an: *

- ☐ Interim Report (If you have NOT expended all your funds at this time. A final report will be completed later; due in January 2021)
- ☐ Final Report (This report will be your Final Report if all incurred expenses are accounted for at this time; this funding source can be closed)

Total amount of grant award received for the Food Bank and Food Pantry Assistance grant: *

\$ USD

If you need to check the grant amount(s) you have been awarded to-date, you can find out the amount(s) awarded by logging in to your Submittable account, navigating to the All Submissions tab, select the title of your accepted application for this program specifically, and then navigate to the Messages tab. The amount will be listed in the message (s) from the State of Montana.

As of 9/30/2020; amount of awarded funds that were incurred and paid for: *

\$ USD

A paid incurred expense is defined as a cost that your business incurred for goods or services and paid for, making it a paid expense.

As of 9/30/2020; amount of awarded funds obligated by 12/30/2020: *

\$ USD

An obligation is defined as a commitment to make a payment for a good or service, recorded as a liability but not yet paid. Prepayments of expenses, such as mortgage for 2021 months, are not allowed.

If your business or organization reported an amount of obligations in the previous question, please provide a brief description for these obligations: *

Limit: 500 characters

Anticipated Remaining Balance of awarded funds not incurred or obligated by 12/30/2020: *

\$ _____ USD

These are awarded funds that you will not be able to spend by 12/30/2020. The State of Montana will require your organization to return any unspent funds that remain unspent by 12/30/2020. Instructions on the process of returning unspent funds will be sent out at an upcoming date.

If your business or organization reported an amount as an anticipated remaining balance as of 12/30/2020, please check the appropriate box below: *

- ☐ My business/organization will not be able to spend the anticipated remaining balance and will need to return the balance to the State.
- ☐ My business/organization will determine other allowable costs for the anticipated remaining balance and will obligate the balance prior to 12/30/2020.

Please provide a brief explanation as to how the awarded funds were spent to help offset the negative impacts to your business or organization from the COVID-19 pandemic: *

Limit: 750 characters

Examples should fall in line with the budget categories reported below.

Average number of weekly participants served during the months that your organization received funding for: *

Please list below expenses for eligible expenditures to-date for your business or organization:

NOTE: In your Final Report, if your business or organization received in total more than \$50,000 in Montana Coronavirus Relief Fund grants, it will be required that you upload your general ledger detail from your accounting system for all liquidated expenses using the awarded funds. All expenses in the general ledger detail should match the amount listed in the cost categories below on your final report. The Final Report will be due no later than January 31, 2021.

****If your organization received in total more than \$50K in Montana Coronavirus Relief Grant Funds AND this is your final report (if all incurred expenses have been accounted for), please upload your general ledger detail from your accounting system for all liquidated expenses using the awarded funds:**

Choose File

Upload a file. No files have been attached yet.

Acceptable file types: .csv, .doc, .docx, .odt, .pdf, .rtf, .txt, .wpd, .wpf, .gif, .jpg, .jpeg, .png, .svg, .tif, .tiff

All expenses in the general ledger detail should match the amount listed in the cost categories below.

Please indicate how much of the awarded grant funds were expended for Payroll and/or Salaries:

\$ USD

To calculate eligible payroll expenditures, take hourly rate x number of hours worked. Add in any employer-paid benefits (such as health insurance or retirement contributions). Payroll taxes are not an allowable expense for Coronavirus Relief Funding.

Please indicate how much of the awarded grant funds were expended on Equipment purchases:

\$ USD

Non-expendable personal property that has a useful life of more than one year and per-unit cost of \$5,000 or more.

Please indicate how much of the awarded grant funds were expended on Supply purchases:

\$ USD

Consumable materials costing less than \$5,000 such as paper, pens, pencils, computers, training materials, health and safety supplies such as PPE and sanitation supplies, etc.

Please indicate how much of the awarded grant funds were expended on OTHER business expenses:

\$ USD

E.g., rent, utilities, leased equipment, supportive services, training/tuition, mitigation strategies to address COVID-19 related risks, modifications related to addressing COVID-19, etc.

If awarded funds were expended as Other Business Expenses, please describe what were those other business costs and how much was expended per other costs:

Other Business Cost #1:

\$ USD

Description - Other Business Cost #1

Other Business Cost #2:

\$ USD

Description - Other Business Cost #2:

Other Business Cost #3:

\$ USD

Description - Other Business Cost #3:

Other Business Cost #4:

\$ USD

Description - Other Business Cost #4:

Other Business Cost #5:

\$ USD

Description - Other Business Cost #5:

Certification

I certify by my e-Signature below that the funds received from the CARES Act Relief Program were used solely for the purposes approved in the Coronavirus Relief Funding Contract. This report is true, complete, and accurate to the best of my knowledge.

e-Signature of Recipient: *

First Name

Last Name

Save Draft

Submit Form

December 22, 2020

Resolution #20-70

Agenda Action Report
prepared for the
Cascade County Commission

ITEM:

**Budget Appropriation
Contract 20-201 FFY2019 CSFP
Modification #5 CARES Act Funding**

ACTION REQUESTED:

Approval Resolution 20-70

PRESENTED BY:

Kim Thiel-Schaaf, Aging Services Director

SYNOPSIS:

Resolution #20-70 appropriates funds from the Governor's CARES Act Funds provided to Montana DPHHS Intergovernmental Services Bureau for COVID19 response within the USDA Commodities Programs which was approved in Contract 20-201.

This fiscal increase provides funding that will assist with the increased logistics within the Commodities Program due to the COVID19 pandemic. USDA CSFP is operated in Cascade County by Aging Services.

The appropriation provides for an additional \$43,000 from the Governor's CARES Act funding to be used to purchase a large utility vehicle to transport commodities throughout the county more efficiently during COVID19.

RECOMMENDATION:

Approval of Resolution 20-70

TWO MOTIONS PROVIDED FOR CONSIDERATION:

MOTION TO APPROVE: Mr. Chair, I move that the Commissioners **APPROVE** Resolution #20-70 Appropriation within Cascade County Aging Services Commodities Programs to implement fiscal changes in Contract 20-201

MOTION TO DISAPPROVE: Mr. Chair, I move that the Commissioners **DISAPPROVE** Resolution #20-70, Appropriation within Cascade County Aging Services Commodities Programs to implement fiscal changes in Contract 20-201

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF CASCADE COUNTY, MONTANA

**IN THE MATTER OF A BUDGET
APPROPRIATION WITHIN CASCADE COUNTY
COMMODITIES GRANT COVID-19 INCREASE**

RESOLUTION 20-70

WHEREAS, the Commission approved Contract #20-153 on October 13, 2020, 2020 which is Amendment #4 to the original Commodities Supplemental Food contract effective 10/1/2019 through 9/30/2020; and

WHEREAS, the Commission approved Contract #20-201 this day, amending Contract 20-153 and providing COVID-19 funding in the amount of \$43,000 for purchase of a vehicle to deliver commodities; and

WHEREAS, a budget amendment is necessary to increase the appropriations to provide the budget authority in the amount of \$43,000 which is offset by grant revenues in the amount of \$43,000; and

WHEREAS, pursuant to Section 7-6-4006, M.C.A. 2019, the Board of County Commissioners has the power to appropriate funds within the budget; and

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of County Commissioners of Cascade County the appropriation adjustments are to be made as detailed in Attachment A;

Dated this 22nd Day of December, 2020.

**BOARD OF COUNTY COMMISSIONERS
CASCADE COUNTY, MONTANA**

JAMES L. LARSON, CHAIRMAN

JANE WEBER, COMMISSIONER

JOE BRIGGS, COMMISSIONER

ATTEST:

CLERK & RECORDER/AUDITOR
mke

Attachment A



To: Cascade County Board of Commissioners

Prepared by: Kim Hulten

	Fund		Dept		Function		Account	Budgeted Amount	Increase (Decrease)	Amended Budget
<u>Expenses</u>										
Acct #	2926	-	434	-	L1000	-	800.820	\$ -	\$ 43,000	\$ 43,000
Acct #		-		-		-		\$ -	\$ -	\$ -
Acct #		-		-		-		\$ -	\$ -	\$ -
Acct #		-		-		-		\$ -	\$ -	\$ -
Acct #		-		-		-		\$ -	\$ -	\$ -
Acct #		-		-		-		\$ -	\$ -	\$ -
Acct #		-		-		-		\$ -	\$ -	\$ -
Acct #		-		-		-		\$ -	\$ -	\$ -
Acct #		-		-		-		\$ -	\$ -	\$ -
cct #		-		-		-		\$ -	\$ -	\$ -
Acct #		-		-		-		\$ -	\$ -	\$ -
Acct #		-		-		-		\$ -	\$ -	\$ -
Acct #		-		-		-		\$ -	\$ -	\$ -
		-		-		-		\$ -	\$ -	\$ -
		-		-		-		\$ -	\$ 43,000	\$ 43,000

Acct #	<u>2926</u>	-	<u>434</u>	-	<u>33.1990</u>	\$	-	\$	43,000	\$	43,000
Acct #	<u> </u>	-	<u> </u>	-	<u> </u>	\$	-	\$	-	\$	-
						\$	-	\$	43,000	\$	43,000.00

Changes authorized by:

Department Head Signature or
 Elected Official Signature

Date

Kim Thiel-Schaaf
Print Name

Mark E. Emberton 12/11/2020
Budget Officer Date

**CONTRACT AMENDMENT NO. 5
CONTRACT FOR CSFP
CONTRACT # 20027210050**

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Modification/Appropriation Checklist

- ☒ **TITLE** - Look at top of form to make sure you have the correct template for either a modification or appropriation.
- ☒ **DATE** is either the date prepared, or if it is for a previous fiscal year, use 6/30/___
- ☒ **TO** - Modifications to the Fiscal Officer, Appropriations to the Cascade County Board of Commissioners
- ☒ **PROGRAM NAME** - Name of program (Adult Detention, Senior Nutrition, Cancer Control, etc.)
- ☒ **CFDA** - Provide if there is one
- ☒ **CONTRACT #** - Provide if there is one
- ☒ **RESPONSIBLE DEPARTMENT** - Main department that is requesting. (Aging, Health, Sheriff etc.)
- ☒ **PREPARED BY** - Name of person who prepared request

Run Budget Performance Report for G/L account set/s you are using

- ☒ **LOOK at how much budget** you have in an account set before increasing or decreasing.
- ☒ **USE** the 'Amended Budget' line on BPR. **MUST** go in the 'Budgeted Amount' column of worksheet

Actions

- ☒ **FUND** - Check the correct fund is used in all lines.
- ☒ **DEPT** - Check the correct dept. is used in all lines.
- ☒ **FUNCTION** - Check the correct function is used in all lines.
- ☒ **ACCOUNT** - Check the correct accounts are used in all lines and that the accounts exist.
- ☒ **BUDGETED AMOUNT** - Use amount from BPR 'Amended Budget' line.
- ☒ **INCREASE/DECREASE** - Check that correct amounts are being increased or decreased.
- ☒ **AMENDED BUDGET** - Check that this is total of Budgeted Amount +- Increase/Decrease amount.
- ☒ **REVENUE** - Check that FULL account number exists and is correct. Revenue lines have no function code.

Explanation of Budget Changes

- ☒ Put detailed explanation of what the appropriation or modification is doing and for which dates.

Changes authorized by

- ☒ Department head signed, dated and printed name before sending to Fiscal Officer for his signature.

Attachments

- ☒ Attach Budget Performance Report to ALL appropriations & modifications.
- ☒ Attach any applicable Contracts or other backup.
- ☒ Attach checklist - This must be included but will not be recorded with document.

PREPARER'S INITIALS *KL* DEPT HEAD INITIALS *GH*

December 22, 2020

Resolution #20-73

Agenda Action Report
prepared for the
Cascade County Commission

ITEM:

**Budget Appropriation
Increasing Revenues & Expenses
within Public Works Fleet Fund**

ACTION REQUESTED:

Approval of Resolution 20-73

PRESENTED BY:

Les Payne, Public Works Director

SYNOPSIS:

Resolution #20-73 increases revenues and expenses within the Public Works Fleet to allow for the purchase of a large SUV for the Aging Services Commodities Program utilizing CARES Act funding (Ref. Contract 20-201). Total budget increase is \$43,000.

This fiscal increase allows for transfer of the funds received under Contract 20-201 which will reimburse the Fleet Division for the purchase of the vehicle. will assist with the increased logistics within the Commodities Program due to the COVID-19

RECOMMENDATION:

Approval of Resolution 20-73.

TWO MOTIONS PROVIDED FOR CONSIDERATION:

MOTION TO APPROVE: Mr. Chair, I move that the Commissioners **APPROVE** Resolution #20-73 Budget Appropriation within Cascade County Aging Services Commodities Programs to implement fiscal changes in Contract 20-201.

MOTION TO DISAPPROVE: Mr. Chair, I move that the Commissioners **DISAPPROVE** Resolution #20-73, Budget Appropriation within Cascade County Aging Services Commodities Programs to implement fiscal changes in Contract 20-201.

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF CASCADE COUNTY, MONTANA

**IN THE MATTER OF A BUDGET
APPROPRIATION WITHIN CASCADE COUNTY
FLEET FUND #6051**

RESOLUTION 20-73

WHEREAS, the Commission passed Resolution 19-53 Adopting the Final Budget for FY2020 on September 3, 2019 as per MCA 7-6-4020 for all funds including Fund #6051 Fleet; and

WHEREAS, Aging Services received additional Covid-19 grant funding for the Commodities Program to be used to purchase a vehicle for deliveries, which was neither anticipated nor budgeted; and

WHEREAS, the Public Works Department purchases all County light vehicles through the Fleet Fund #6051 so Aging Services will transfer the grant funding of \$43,000 from the Commodities Fund #2926 to the Fleet Fund #6051 in order to complete the purchase; and

WHEREAS, a budget amendment is necessary to increase expenditures in Fund #6051 Fleet in the amount of \$43,000 which is offset by Transfer In revenues in the amount of \$43,000; and

WHEREAS, pursuant to Section 7-6-4006, M.C.A. 2017, the Board of County Commissioners has the power to appropriate funds within the budget; and

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of County Commissioners of Cascade County the appropriation adjustments are to be made as detailed in Attachment A;

Dated this 22nd Day of December, 2020.

**BOARD OF COUNTY COMMISSIONERS
CASCADE COUNTY, MONTANA**

JAMES L. LARSON, CHAIRMAN

JANE WEBER, COMMISSIONER

JOE BRIGGS, COMMISSIONER

ATTEST:

CLERK & RECORDER/AUDITOR
mke



Budget Performance Report

Fiscal Year to Date 12/10/20

Include Rollup Account and Rollup to Object

Account	Account Description	Adopted Budget	Budget Amendments	Amended Budget	Current Month Transactions	YTD Encumbrances	YTD Transactions	Budget - YTD Transactions	% Used/ Rec'd	Prior Year Total
Fund 6051 - Fleet										
REVENUE										
Department 000 - Revenue										
33										
33.6020	Revenue - On-behalf payment	.00	.00	.00	.00	.00	.00	.00	+++	13,533.44
33 - Totals		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	+++	\$13,533.44
Department 000 - Revenue Totals		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	+++	\$13,533.44
Department 221 - Fleet Maint.										
36										
36.2000	Miscellaneous Revenues	.00	.00	.00	.00	.00	.00	.00	+++	53.11
36.7000	Sale of Junk or Salvage	.00	.00	.00	.00	.00	.00	.00	+++	1,749.99
36 - Totals		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	+++	\$1,803.10
38										
38.2030	Gain/Loss-Sale of Assets	20,000.00	.00	20,000.00	.00	.00	.00	20,000.00	0	28,848.07
38.3000	Interfund Oper. Transfer	373,000.00	.00	373,000.00	.00	.00	.00	373,000.00	0	.00
38.3080	Transfer from General Fd	201,000.00	.00	201,000.00	.00	.00	.00	201,000.00	0	.00
38 - Totals		\$594,000.00	\$0.00	\$594,000.00	\$0.00	\$0.00	\$0.00	\$594,000.00	0%	\$28,848.07
39										
39.7000	Vehicle Mileage Revenue	1,000,000.00	.00	1,000,000.00	.00	.00	373,967.64	626,032.36	37	1,012,665.00
39 - Totals		\$1,000,000.00	\$0.00	\$1,000,000.00	\$0.00	\$0.00	\$373,967.64	\$626,032.36	37%	\$1,012,665.00
Department 221 - Fleet Maint. Totals		\$1,594,000.00	\$0.00	\$1,594,000.00	\$0.00	\$0.00	\$373,967.64	\$1,220,032.36	23%	\$1,043,316.17
REVENUE TOTALS		\$1,594,000.00	\$0.00	\$1,594,000.00	\$0.00	\$0.00	\$373,967.64	\$1,220,032.36	23%	\$1,056,849.61
EXPENSE										
Department 221 - Fleet Maint.										
Function J0100 - Central Garages										
100										
100.110	Salaries & Wages	176,207.00	.00	176,207.00	6,912.59	.00	74,756.18	101,450.82	42	183,491.61
100.120	Overtime	6,000.00	.00	6,000.00	.00	.00	176.93	5,823.07	3	1,044.06
100.130	Termination Pay	1,000.00	.00	1,000.00	.00	.00	.00	1,000.00	0	802.92
100.135	Compensated Absence Expense	.00	.00	.00	.00	.00	.00	.00	+++	(5,212.43)
100.140	Employer Contributions	61,098.00	.00	61,098.00	2,430.74	.00	25,496.09	35,601.91	42	65,705.54
100.146	Union Pensions	19,900.00	.00	19,900.00	781.32	.00	8,455.58	11,444.42	42	21,579.10
100.147	Pension Expense- GASB	.00	.00	.00	.00	.00	.00	.00	+++	443,561.55
100 - Totals		\$264,205.00	\$0.00	\$264,205.00	\$10,124.65	\$0.00	\$108,884.78	\$155,320.22	41%	\$710,972.35
200										
200.220	Operating Supplies	8,650.00	.00	8,650.00	.00	.00	.00	8,650.00	0	2,821.61
200.230	Repair & Maint. Supplies	79,857.00	.00	79,857.00	.00	11,092.48	30,810.16	37,954.36	52	67,241.93
200.238	Gas & Oil	217,000.00	.00	217,000.00	9,379.82	16,000.00	86,376.62	114,623.38	47	214,510.58
200.240	Other Repair & Maint. Sup	6,000.00	.00	6,000.00	.00	60.00	349.78	5,590.22	7	3,817.44
200 - Totals		\$311,507.00	\$0.00	\$311,507.00	\$9,379.82	\$27,152.48	\$117,536.56	\$166,817.96	46%	\$288,391.56



Budget Performance Report

Fiscal Year to Date 12/10/20

Include Rollup Account and Rollup to Object

Account	Account Description	Adopted Budget	Budget Amendments	Amended Budget	Current Month Transactions	YTD Encumbrances	YTD Transactions	Budget - YTD Transactions	% Used/ Rec'd	Prior Year Total
Fund 6051 - Fleet										
EXPENSE										
Department 221 - Fleet Maint.										
Function J0100 - Central Garages										
300										
300.310	Communication & Transp.	500.00	.00	500.00	.00	.00	.00	500.00	0	.00
300.333	Software Licenses	5,250.00	.00	5,250.00	.00	.00	2,741.00	2,509.00	52	4,542.45
300.345	Sanitation	5,600.00	.00	5,600.00	.00	60.00	1,083.56	4,456.44	20	5,234.00
300.350	Professional Services	1,000.00	.00	1,000.00	.00	.00	355.02	644.98	36	220.00
300.360	Repair & Maint. Services	8,500.00	.00	8,500.00	.00	382.15	3,106.85	5,011.00	41	5,244.43
300.374	Mileage County Vehicles	35,000.00	.00	35,000.00	.00	.00	13,630.00	21,370.00	39	34,902.00
300.380	Training Services	1,000.00	.00	1,000.00	.00	.00	.00	1,000.00	0	165.00
300 - Totals		\$56,850.00	\$0.00	\$56,850.00	\$0.00	\$442.15	\$20,916.43	\$35,491.42	38%	\$50,307.88
500										
500.510	Insurance	158,016.00	.00	158,016.00	.00	.00	137,911.95	20,104.05	87	130,128.87
500 - Totals		\$158,016.00	\$0.00	\$158,016.00	\$0.00	\$0.00	\$137,911.95	\$20,104.05	87%	\$130,128.87
900										
900.940	Machinery & Equipment	616,000.00	.00	616,000.00	.00	591,906.52	.00	24,093.48	96	.00
900 - Totals		\$616,000.00	\$0.00	\$616,000.00	\$0.00	\$591,906.52	\$0.00	\$24,093.48	96%	\$0.00
Function J0100 - Central Garages Totals		\$1,406,578.00	\$0.00	\$1,406,578.00	\$19,504.47	\$619,501.15	\$385,249.72	\$401,827.13	71%	\$1,179,800.66
Function K0400 - Depreciation										
800										
800.830	Depreciation/Retained Ear	.00	.00	.00	.00	.00	.00	.00	+++	486,903.49
800 - Totals		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	+++	\$486,903.49
Function K0400 - Depreciation Totals		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	+++	\$486,903.49
Department 221 - Fleet Maint. Totals		\$1,406,578.00	\$0.00	\$1,406,578.00	\$19,504.47	\$619,501.15	\$385,249.72	\$401,827.13	71%	\$1,666,704.15
EXPENSE TOTALS		\$1,406,578.00	\$0.00	\$1,406,578.00	\$19,504.47	\$619,501.15	\$385,249.72	\$401,827.13	71%	\$1,666,704.15
Fund 6051 - Fleet Totals										
REVENUE TOTALS		1,594,000.00	.00	1,594,000.00	.00	.00	373,967.64	1,220,032.36	23%	1,056,849.61
EXPENSE TOTALS		1,406,578.00	.00	1,406,578.00	19,504.47	619,501.15	385,249.72	401,827.13	71%	1,666,704.15
Fund 6051 - Fleet Totals		\$187,422.00	\$0.00	\$187,422.00	(\$19,504.47)	(\$619,501.15)	(\$11,282.08)	\$818,205.23		(\$609,854.54)
Grand Totals										
REVENUE TOTALS		1,594,000.00	.00	1,594,000.00	.00	.00	373,967.64	1,220,032.36	23%	1,056,849.61
EXPENSE TOTALS		1,406,578.00	.00	1,406,578.00	19,504.47	619,501.15	385,249.72	401,827.13	71%	1,666,704.15
Grand Totals		\$187,422.00	\$0.00	\$187,422.00	(\$19,504.47)	(\$619,501.15)	(\$11,282.08)	\$818,205.23		(\$609,854.54)

Modification/Appropriation Checklist

- ☒ **TITLE** - Look at top of form to make sure you have the correct template for either a modification or appropriation.
- ☒ **DATE** is either the date prepared, or if it is for a previous fiscal year, use 6/30/___
- ☒ **TO** - Modifications to the Fiscal Officer, Appropriations to the Cascade County Board of Commissioners
- ☒ **PROGRAM NAME** - Name of program (Adult Detention, Senior Nutrition, Cancer Control, etc.)
- ☒ **CFDA** - Provide if there is one
- ☒ **CONTRACT #** - Provide if there is one
- ☒ **RESPONSIBLE DEPARTMENT** - Main department that is requesting. (Aging, Health, Sheriff etc.)
- ☒ **PREPARED BY** - Name of person who prepared request

Run Budget Performance Report for G/L account set/s you are using

- ☒ **LOOK at how much budget** you have in an account set before increasing or decreasing.
- ☒ **USE** the 'Amended Budget' line on BPR. MUST go in the 'Budgeted Amount' column of worksheet

Actions

- ☒ **FUND** - Check the correct fund is used in all lines.
- ☒ **DEPT** - Check the correct dept. is used in all lines.
- ☒ **FUNCTION** - Check the correct function is used in all lines.
- ☒ **ACCOUNT** - Check the correct accounts are used in all lines and that the accounts exist.
- ☒ **BUDGETED AMOUNT** - Use amount from BPR 'Amended Budget' line.
- ☒ **INCREASE/DECREASE** - Check that correct amounts are being increased or decreased.
- ☒ **AMENDED BUDGET** - Check that this is total of Budgeted Amount +- Increase/Decrease amount.
- ☒ **REVENUE** - Check that FULL account number exists and is correct. Revenue lines have no function code.

Explanation of Budget Changes

- ☒ Put detailed explanation of what the appropriation or modification is doing and for which dates.

Changes authorized by

- ☒ Department head signed, dated and printed name before sending to Fiscal Officer for his signature.

Attachments

- ☒ Attach Budget Performance Report to ALL appropriations & modifications.
- ☒ Attach any applicable Contracts or other backup.
- ☒ Attach checklist - This must be included but will not be recorded with document.

PREPARER'S INITIALS KU DEPT HEAD INITIALS [Signature]

December 22, 2020

Resolution #20-74

Agenda Action Report
Prepared for the
Cascade County Commission

ITEM: Prosecutorial Assistance
INITIATED AND PRESENTED BY: Carey Ann Haight, Deputy County Attorney
ACTION REQUESTED: Approval of Resolution 20-74

BACKGROUND:

The Cascade County Attorney is in need of assistance with regard to a criminal case, State v. Brandon King, Cascade County District Court DDC-20-573. The Cascade County Attorney's Office has a conflict of interest which prevents it from acting in this instance.

The Cascade County Attorney's Office, pursuant to MCA § 44-4-111, the training coordinator for county attorneys and the bureau chief of Prosecution Services Bureau (together with the deputies within said bureau) who act as special counsel on request of the county attorney generally decline to provide assistance unless the case involves a significant felony case. Mont. Code Ann. § 7-4-2401 (1) authorizes the County Attorney to appoint as many deputies or assistants as may be necessary for the faithful and prompt discharge of the duties of the office. The Chouteau County Attorney's Office and County Attorney Steve Gannon has agreed to accept appointment with regard to this matter. Cascade County will bear costs associated with the prosecution, but not attorney fees.

RECOMMENDATION: Approval of Resolution 20-74.

TWO MOTIONS PROVIDED FOR CONSIDERATION:

MOTION TO APPROVE:

Mr. Chair, I move that the Commission **APPROVE** Resolution 20-74, authorizing the appointment of Steven Gannon as a special prosecutor from the Chouteau County Attorney's Office in the matter of State v. Brandon King, Cascade County District Court DDC-20-573.

MOTION TO DISAPPROVE:

Mr. Chair, I move that the Commission **DISAPPROVE** Resolution 20-74, authorizing the appointment of Steven Gannon as a special prosecutor from the Chouteau County Attorney's Office in the matter of State v. Brandon King, Cascade County District Court DDC-20-573.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
CASCADE COUNTY, MONTANA**

**IN RE: RESOLUTION TO
APPOINT SPECIAL PROSECUTOR**

RESOLUTION 20-74

Whereas, due to a conflict, the Cascade County Attorney has requested prosecutorial assistance in *State of Montana v. Brandon King*, Cascade County District Court Cause DDC-20-573; and

WHEREAS, it is desired and deemed appropriate that a special deputy county attorney be appointed to assist in the prosecution of the aforementioned case, and

WHEREAS, Mont. Code Ann. § 44-4-111 authorizes and contemplates that the training coordinator for county attorneys and the bureau chief of Prosecution Services Bureau (together with the deputies within said bureau) act as special counsel on request of the county attorney, and

WHEREAS, the Prosecution Services Bureau has does not typically provide prosecution support unless the matter involves significant felony level charges, and

WHEREAS, Mont. Code Ann. § 7-4-2401 (1) authorizes each officer to appoint as many deputies or assistants as may be necessary for the faithful and prompt discharge of the duties of the office; and,

WHEREAS, the Cascade County Attorney's Office has consulted with the Chouteau County Attorney's Office for assistance in the above cause of action and the Chouteau County Attorney's Office has consented to providing such assistance;

It Is Hereby Resolved:

That Steven Gannon, Chouteau County Attorney shall be hereby appointed as a special deputy county attorney for Cascade County for the purpose of assisting in the prosecution of the aforementioned case.

It is Further Resolved:

That under the terms of this agreement, no fee will be charged for attorney time provided by the Chouteau County Attorney's Office. Witness fees and expenses, jury costs, attorney travel and lodging at Cascade County approved rates, and other normal costs associated with trial will be the County's responsibility as with all other prosecutions.

Dated this ____ day of _____, 2020

BOARD OF COUNTY COMMISSIONERS
CASCADE COUNTY, MONTANA

James L. Larson, Chairman

Jane Weber, Commissioner

Joe Briggs, Commissioner

Attest

Rina Fontana Moore,
Cascade County Clerk and Recorder

* APPROVED AS TO FORM:

Josh Racki, County Attorney

DEPUTY COUNTY ATTORNEY

* THE COUNTY ATTORNEY HAS PROVIDED ADVICE AND APPROVAL OF THE FOREGOING DOCUMENT LANGUAGE ON BEHALF OF THE BOARD OF CASCADE COUNTY COMMISSIONERS, AND NOT ON BEHALF OF OTHER PARTIES OR ENTITIES. REVIEW AND APPROVAL OF THIS DOCUMENT BY THE COUNTY ATTORNEY WAS CONDUCTED SOLELY FROM A LEGAL PERSPECTIVE AND FOR THE EXCLUSIVE BENEFIT OF CASCADE COUNTY. OTHER PARTIES SHOULD NOT RELY ON THIS APPROVAL AND SHOULD SEEK REVIEW AND APPROVAL BY THEIR OWN RESPECTIVE COUNSEL.

December 22, 2020

Resolution #20-75

Agenda Action Report
Prepared for the
Cascade County Commission

ITEM: Prosecutorial Assistance
INITIATED AND PRESENTED BY: Carey Ann Haight, Deputy County Attorney
ACTION REQUESTED: Approval of Resolution 20-75

BACKGROUND:

The Cascade County Attorney is in need of assistance with regard to a criminal case, State v. Kerri Evans, Cascade County District Court DDC-20-574. The Cascade County Attorney's Office has a conflict of interest which prevents it from acting in this instance.

The Cascade County Attorney's Office, pursuant to MCA § 44-4-111, the training coordinator for county attorneys and the bureau chief of Prosecution Services Bureau (together with the deputies within said bureau) who act as special counsel on request of the county attorney generally decline to provide assistance unless the case involves a significant felony case. Mont. Code Ann. § 7-4-2401 (1) authorizes the County Attorney to appoint as many deputies or assistants as may be necessary for the faithful and prompt discharge of the duties of the office. The Chouteau County Attorney's Office and County Attorney Steve Gannon has agreed to accept appointment with regard to this matter. Cascade County will bear costs associated with the prosecution, but not attorney fees.

RECOMMENDATION: Approval of Resolution 20-75.

TWO MOTIONS PROVIDED FOR CONSIDERATION:

MOTION TO APPROVE:

Mr. Chair, I move that the Commission **APPROVE** Resolution 20-75, authorizing the appointment of Steven Gannon as a special prosecutor from the Chouteau County Attorney's Office in the matter of State v. Kerri Evans, Cascade County District Court DDC-20-574.

MOTION TO DISAPPROVE:

Mr. Chair, I move that the Commission **DISAPPROVE** Resolution 20-75, authorizing the appointment of Steven Gannon as a special prosecutor from the Chouteau County Attorney's Office in the matter of State v. Kerri Evans, Cascade County District Court DDC-20-574.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
CASCADE COUNTY, MONTANA**

**IN RE: RESOLUTION TO
APPOINT SPECIAL PROSECUTOR**

RESOLUTION 20-75

Whereas, due to a conflict, the Cascade County Attorney has requested prosecutorial assistance in *State of Montana v. Kerri Evans*, Cascade County District Court Cause DDC-20-574; and

WHEREAS, it is desired and deemed appropriate that a special deputy county attorney be appointed to assist in the prosecution of the aforementioned case, and

WHEREAS, Mont. Code Ann. § 44-4-111 authorizes and contemplates that the training coordinator for county attorneys and the bureau chief of Prosecution Services Bureau (together with the deputies within said bureau) act as special counsel on request of the county attorney, and

WHEREAS, the Prosecution Services Bureau has does not typically provide prosecution support unless the matter involves significant felony level charges, and

WHEREAS, Mont. Code Ann. § 7-4-2401 (1) authorizes each officer to appoint as many deputies or assistants as may be necessary for the faithful and prompt discharge of the duties of the office; and,

WHEREAS, the Cascade County Attorney's Office has consulted with the Chouteau County Attorney's Office for assistance in the above cause of action and the Chouteau County Attorney's Office has consented to providing such assistance;

It Is Hereby Resolved:

That Steven Gannon, Chouteau County Attorney shall be hereby appointed as a special deputy county attorney for Cascade County for the purpose of assisting in the prosecution of the aforementioned case.

RESOLUTION 20-75

It is Further Resolved:

That under the terms of this agreement, no fee will be charged for attorney time provided by the Chouteau County Attorney's Office. Witness fees and expenses, jury costs, attorney travel and lodging at Cascade County approved rates, and other normal costs associated with trial will be the County's responsibility as with all other prosecutions.

Dated this _____ day of _____, 2020

BOARD OF COUNTY COMMISSIONERS
CASCADE COUNTY, MONTANA

James L. Larson, Chairman

Jane Weber, Commissioner

Joe Briggs, Commissioner

Attest

Rina Fontana Moore,
Cascade County Clerk and Recorder

* APPROVED AS TO FORM:

Josh Racki, County Attorney

DEPUTY COUNTY ATTORNEY

* THE COUNTY ATTORNEY HAS PROVIDED ADVICE AND APPROVAL OF THE FOREGOING DOCUMENT LANGUAGE ON BEHALF OF THE BOARD OF CASCADE COUNTY COMMISSIONERS, AND NOT ON BEHALF OF OTHER PARTIES OR ENTITIES. REVIEW AND APPROVAL OF THIS DOCUMENT BY THE COUNTY ATTORNEY WAS CONDUCTED SOLELY FROM A LEGAL PERSPECTIVE AND FOR THE EXCLUSIVE BENEFIT OF CASCADE COUNTY. OTHER PARTIES SHOULD NOT RELY ON THIS APPROVAL AND SHOULD SEEK REVIEW AND APPROVAL BY THEIR OWN RESPECTIVE COUNSEL.

December 22, 2020

Resolution 20-76

Agenda Action Report
Prepared for the
Cascade County Commission

ITEM: A Resolution Delegating Contracting Authority to
Cascade County Public Works Director Les Payne

INITIATED AND PRESENTED BY: Carey Ann Haight, Deputy County Attorney

ACTION REQUESTED: Approval of Resolution 20-76

BACKGROUND:

Cascade County's Public Works Director often encounters facility emergencies and repairs which need to be addressed immediately, including but not limited to heating, cooling, broken pipes, hot water heaters, and plumbing leaks, and such. In addition, the Director often encounters facility needs that include routine fixes and upgrades which although not emergent, from a facilities and operational standpoint represent work that is best expedited. The foregoing projects, individually, generally do not cost in excess of \$20,000, and as such are not projects which necessitate formal sealed bid procurements. Finally, the projects as described are not financially or otherwise matters of such significant public interest that formal public notice and action by the Board of County Commissioners at a public meeting is necessary or required.

The Board of County Commissioners has previously provided verbal or email authorization to the Public Works Director to handle these small contracting matters. Passing the subject Resolution will expedite the contracting process for the Public Works Director in the field and will also provide the Public Works Director with formal written contract authority for internal and external audit purposes.

RECOMMENDATION: Approval of Resolution 20-76.

TWO MOTIONS PROVIDED FOR CONSIDERATION:

MOTION TO APPROVE:

Mr. Chair, I move that the Commission approve Resolution 20-76, a Resolution Delegating Contracting Authority to Cascade County Public Works Director Les Payne

MOTION TO DISAPPROVE:

Mr. Chair, I move that the Commission disapprove Resolution 20-76, a Resolution Delegating Contracting Authority to Cascade County Public Works Director Les Payne.

**BEFORE THE BOARD CASCADE COUNTY COMMISSIONERS
CASCADE COUNTY, MONTANA**

**A RESOLUTION DELEGATING CONTRACTING
AUTHORITY TO CASCADE COUNTY
PUBLIC WORKS DIRECTOR LES PAYNE**

RESOLUTION 20-76

WHEREAS, the Board of Cascade County Commissioners employs a Public Works Director (Director) whose position is to oversee county facilities and all aspects of Cascade County's physical plant; and

WHEREAS, the Director often encounters facility emergencies and repairs which need to be addressed immediately, including but not limited to heating, cooling, broken pipes, hot water heaters, and plumbing leaks, and the like; and

WHEREAS, the Director often encounters facility needs that include routine fixes and upgrades which although not emergent, from a facilities and operational standpoint represent work that is best expedited; and

WHEREAS, the individual projects described herein generally do not cost in excess of \$20,000, and as such are not projects which necessitate formal sealed bid procurements; and

WHEREAS, the projects described herein are not financially or in any other sense matters of such significant public interest that formal public notice and action by the Board of County Commissioners at a public meeting is necessary or required; and

WHEREAS, pursuant to MCA 7-1-2103(3), a county has power to make contracts and purchase and hold personal property that may be necessary to the exercise of its powers; and

WHEREAS, pursuant to MCA 7-1-2104, a county's powers can only be exercised by the board of county commissioners or by agents and officers acting under their authority or authority of law; and

WHEREAS, pursuant to MCA 7-5-2101 (1), the board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to represent the county and have the care of the county property and the management of the business and concerns of the county in all cases where no other provision is made by law; and

WHEREAS, pursuant to MCA 7-5-2101(2), the board has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to perform all other acts and things required by law not enumerated in this title or which may be necessary to the full discharge of the duties of the chief executive authority of the county government; and

WHEREAS, the Board of Cascade County Commissioners, pursuant to MCA 7-5-2102 has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to make and enforce such rules for its government, the preservation of order, and the transaction of business as may be necessary; and

NOW THEREFORE, BE IT RESOLVED that the Board of County Commissioners hereby delegates to Les Payne, Public Works Director, the authority to execute contracts on behalf of Cascade County and the Board of Cascade County Commissioners in an amount not to exceed \$20,000 per project, as follows:

1. For facility emergencies and repairs which need to be addressed immediately, including but not limited to heating, cooling, broken pipes, hot water heaters, and plumbing leaks, and the like; and
2. For routine fixes and upgrades which although not emergent, from a facilities and operational standpoint represent work that is best expedited; and

NOW THEREFORE, BE IT FURTHER RESOLVED that a copy of each contract which the Public Works Director executes under the authority delegated to him hereunder shall be responsible for ensuring that said contract is presented to the Board.

Passed and adopted this 22nd day of December, 2020.

BOARD OF COUNTY COMMISSIONERS
OF CASCADE COUNTY, MONTANA

James L. Larson, Chairman

Jane Weber, Commissioner

Joe Briggs, Commissioner

Attest

On this ____ day of _____, 2020, I hereby attest the above-written signatures of the Board of Cascade County Commissioners.

Rina Fontana Moore, Cascade County Clerk and Recorder

* APPROVED AS TO FORM:
Josh Racki, County Attorney

DEPUTY COUNTY ATTORNEY

* THE COUNTY ATTORNEY HAS PROVIDED ADVICE AND APPROVAL OF THE FOREGOING DOCUMENT LANGUAGE ON BEHALF OF THE BOARD OF CASCADE COUNTY COMMISSIONERS, AND NOT ON BEHALF OF OTHER PARTIES OR ENTITIES. REVIEW AND APPROVAL OF THIS DOCUMENT BY THE COUNTY ATTORNEY WAS CONDUCTED SOLELY FROM A LEGAL PERSPECTIVE AND FOR THE EXCLUSIVE BENEFIT OF CASCADE COUNTY. OTHER PARTIES SHOULD NOT RELY ON THIS APPROVAL AND SHOULD SEEK REVIEW AND APPROVAL BY THEIR OWN RESPECTIVE COUNSEL.

December 22, 2020

Contract 20-205

Agenda Action Report
Prepared for the
Cascade County Commission

ITEM: DEA Task Force MOU

INITIATED AND PRESENTED BY: Sheriff Slaughter
Cascade County Sheriff's Office

ACTION REQUESTED: Approval of Contract 20-205

BACKGROUND:

The Memorandum of Understanding (MOU) is entered into by Cascade County Sheriff's Office and the US Department of Justice, Drug Enforcement Administration (DEA). The CCSO will provide one Deputy to the Post of Duty. The DEA will assign five special agents to the Task Force and will also provide funds and equipment to support the activities of the DEA Special Agents and CCSO Deputy.

TERM: December 1, 2020 to September 30, 2021

AMOUNT: \$0

RECOMMENDATION: Approval of Contract 20-205.

TWO MOTIONS PROVIDED FOR CONSIDERATION:

MOTION TO APPROVE:

Mr. Chairman, I move that the Commission **APPROVE** Contract 20-205, DEA Task Force MOU between Cascade County Sheriff's Office and the US Department of Justice, Drug Enforcement Administration.

MOTION TO DISAPPROVE:

Mr. Chairman, I move that the Commission **DISAPPROVE** Contract 20-205, DEA Task Force MOU between Cascade County Sheriff's Office and the US Department of Justice, Drug Enforcement Administration.



U. S. Department of Justice
Drug Enforcement Administration
Denver Field Division
Office of the Special Agent in Charge
12154 East Easter Avenue
Centennial, Colorado 80112

CONTRACT

20-205

www.dea.gov

November 19, 2020

Sheriff Jesse Slaughter
Cascade County Sheriff's Office
3800 Ulm N Frontage Road
Great Falls, Montana 59404

Dear Sheriff Slaughter:

Enclosed please find the Task Force Agreement for the investigator you have assigned to the Denver Field Division as well as the OJP Form 4061/6. It is anticipated this position will be encumbered by:

- Christopher Araujo – Missoula Post of Duty (Program Funded)

If you concur with this Task Force Agreement, please sign and return it along with the OJP Form 4061/6 to my office by December 11, 2020. DEA requires signatures on these agreements before payment can be made. Upon my signature, copies will be returned to your office for your files.

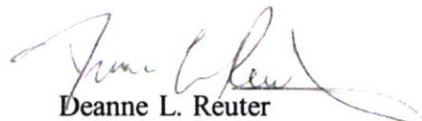
DEA invoices for reimbursement can be emailed to invoice.denver@usdoj.gov or mailed to:

Drug Enforcement Administration
Attn: Fiscal Department
12154 East Easter Avenue
Centennial, Colorado 80112

Submitted invoices must include an invoice number; invoice date; and officer's name, overtime rate, and daily overtime hours paid. Invoices claiming an indirect personnel cost will not be paid and will be returned to your agency. Please be advised your Dun & Bradstreet number must be registered and active in the System Award Management (SAM) order for invoices to be processed for payment.

Should you have any questions or comments, please have your staff contact Program Support Specialist Shanda Meis at 571-387-2254 or via email at Shanda.L.Meis@usdoj.gov.

Sincerely,


Deanne L. Reuter
Special Agent in Charge

Enclosures: Task Force Agreement (Missoula) – Program Funded
OJP Form 4061/6

PROGRAM - FUNDED STATE AND LOCAL TASK FORCE AGREEMENT

This agreement is made this 1st day of December, 2020, between the United States Department of Justice, Drug Enforcement Administration (hereinafter "DEA"), and the Cascade County Sheriff's Office, ORI#MT0070000 (hereinafter "CCSO"). The DEA is authorized to enter into this cooperative agreement concerning the use and abuse of controlled substances under the provisions of 21 U.S.C. § 873.

WHEREAS there is evidence that trafficking in narcotics and dangerous drugs exists in the Western Montana area and that such illegal activity has a substantial and detrimental effect on the health and general welfare of the people of Montana, the parties hereto agree to the following:

1. The Great Falls Post of Duty Task Force will perform the activities and duties described below:
 - a. disrupt the illicit drug traffic in the Western Montana area by immobilizing targeted violators and trafficking organizations;
 - b. gather and report intelligence data relating to trafficking in narcotics and dangerous drugs; and
 - c. conduct undercover operations where appropriate and engage in other traditional methods of investigation in order that the Task Force's activities will result in effective prosecution before the courts of the United States and the State of Montana.
2. To accomplish the objectives of the Great Falls Post of Duty Task Force, the CCSO agrees to detail one (1) experienced officer(s) to the Great Falls Post of Duty Task Force for a period of not less than two years. During this period of assignment, the CCSO officer(s) will be under the direct supervision and control of DEA supervisory personnel assigned to the Task Force.
3. The CCSO officer(s) assigned to the Task Force shall adhere to DEA policies and procedures. Failure to adhere to DEA policies and procedures shall be grounds for dismissal from the Task Force.
4. The CCSO officer(s) assigned to the Task Force shall be deputized as Task Force Officers of DEA pursuant to 21 U.S.C. Section 878.
5. To accomplish the objectives of the Great Falls Post of Duty Task Force, DEA will assign five (5) Special Agents to the Task Force. DEA will also, subject to the availability of annually appropriated funds or any continuing resolution thereof, provide necessary funds and equipment to support the activities of the DEA Special Agent and CCSO officer(s) assigned to the Task Force. This support will include: office space, office supplies, travel funds, funds for the purchase of evidence and information, investigative equipment, training, and other support items.

6. During the period of assignment to the Task Force, the CCSO will remain responsible for establishing the salary and benefits, including overtime, of the officers assigned to the Task Force, and for making all payments due them. DEA will, subject to availability of funds, reimburse the CCSO for overtime payment. Annual overtime for each state or local law enforcement officer is capped at the equivalent of 25% of a GS-12, Step 1, of the general pay scale for the Rest of United States. Reimbursement for all types of qualified expenses shall be contingent upon availability of funds and the submission of a proper request for reimbursement which shall be submitted **monthly or quarterly** on a fiscal year basis, and which provides the names of the investigators who incurred overtime for DEA during the invoiced period, the number of overtime hours incurred, the hourly regular and overtime rates in effect for each investigator, and the total cost for the invoiced period. Invoices must be submitted at least quarterly within 10 business days of the end of the invoiced period.
Note: Task Force Officer's overtime "shall not include any costs for benefits, such as retirement, FICA, and other expenses."
7. In no event will the CCSO charge any indirect cost rate to DEA for the administration or implementation of this agreement.
8. The CCSO shall maintain on a current basis complete and accurate records and accounts of all obligations and expenditures of funds under this agreement in accordance with generally accepted accounting principles and instructions provided by DEA to facilitate on-site inspection and auditing of such records and accounts.
9. The CCSO shall permit and have readily available for examination and auditing by DEA, the United States Department of Justice, the Comptroller General of the United States, and any of their duly authorized agents and representatives, any and all records, documents, accounts, invoices, receipts or expenditures relating to this agreement. The CCSO shall maintain all such reports and records until all litigation, claim, audits and examinations are completed and resolved, or for a period of six (6) years after termination of this agreement, whichever is later.
10. The CCSO shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, as amended, and all requirements imposed by or pursuant to the regulations of the United States Department of Justice implementing those laws, 28 C.F.R. Part 42, Subparts C, F, G, H and I.
11. The CCSO agrees that an authorized officer or employee will execute and return to DEA the attached OJP Form 4061/6, Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements. The CCSO acknowledges that this agreement will not take effect and no Federal funds will be awarded to the CCSO by DEA until the completed certification is received.
12. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, the CCSO shall clearly state (1) the percentage of the total cost of the program or project

which will be financed with Federal money and (2) the dollar amount of Federal funds for the project or program.

13. DEA acknowledges that the United States is liable for the negligent and wrongful acts or omissions of its agents and employees, including task force officers deputized pursuant to 21 USC 878, while acting within the scope of their employment, to the extent permitted by the Federal Tort Claims Act 28 USC 1346, 2671-2680. DEA also acknowledges that task force officers deputized pursuant to 21 USC 878 who are sued in their individual capacity for actions taken within the scope of their employment may request Department of Justice representation on the same basis as DEA employees under 28 CFR 50.15.
14. The term of this agreement shall be effective from the date in paragraph number one until September 30, 2021. This agreement may be terminated by either party on thirty days' advance written notice. Billing for all outstanding obligations must be received by DEA within 90 days of the date of termination of this agreement. DEA will be responsible only for obligations incurred by CCSO during the term of this agreement.

For the Drug Enforcement Administration:

Deanne L. Reuter
Special Agent in Charge

Date: _____

For the Cascade County Sheriff's Office:

Jesse Slaughter
Sheriff

Date: 12/10/2020

**BOARD OF COUNTY COMMISSIONERS
CASCADE COUNTY, MONTANA**

James L. Larson, Chairman

Jane Weber, Commissioner

Joe Briggs, Commissioner

Passed and adopted at Commission Meeting held on this 22nd day of December 2020.

Attest

**On this 22nd day of December 2020, I hereby attest the above-written signatures of
James L. Larson, Jane Weber and Joe Briggs, Cascade County Commissioners.**

RINA FONTANA MOORE, CASCADE COUNTY CLERK AND RECORDER

*** APPROVED AS TO FORM:
Josh Racki, County Attorney**

DEPUTY COUNTY ATTORNEY

*** THE COUNTY ATTORNEY HAS PROVIDED ADVICE AND APPROVAL OF THE FOREGOING DOCUMENT LANGUAGE ON BEHALF OF THE BOARD OF CASCADE COUNTY COMMISSIONERS, AND NOT ON BEHALF OF OTHER PARTIES OR ENTITIES. REVIEW AND APPROVAL OF THIS DOCUMENT BY THE COUNTY ATTORNEY WAS CONDUCTED SOLELY FROM A LEGAL PERSPECTIVE AND FOR THE EXCLUSIVE BENEFIT OF CASCADE COUNTY. OTHER PARTIES SHOULD NOT RELY ON THIS APPROVAL AND SHOULD SEEK REVIEW AND APPROVAL BY THEIR OWN RESPECTIVE COUNSEL.**



U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS
OFFICE OF THE COMPTROLLER

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 28 CFR Part 69, "New Restrictions on Lobbying" and 28 CFR Part 67, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Justice determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 28 CFR Part 69, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (DIRECT RECIPIENT)

As required by Executive Order 12549, Debarment and Suspension, and implemented at 28 CFR Part 67, for prospective participants in primary covered transactions, as defined at 28 CFR Part 67, Section 67.510—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a

public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67 Sections 67.615 and 67.620—

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue, N.W., Washington, D.C. 20531. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Cascade County Sheriff's Office

3800 Ulm North Frontage Road

Great Falls, MT 59404

Check ☐ if there are workplaces on file that are not identified here.

Section 67, 630 of the regulations provides that a grantee that is a State may elect to make one certification in each Federal fiscal year. A copy of which should be included with each application for Department of Justice funding. States and State agencies may elect to use OJP Form 4061/7.

Check ☐ if the State has elected to complete OJP Form 4061/7.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67; Sections 67.615 and 67.620—

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 810 Seventh Street NW., Washington, DC 20531.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

1. Grantee Name and Address:

Cascade County Sheriff's Office

EIN 81-600-1343

2. Application Number and/or Project Name

3. Grantee IRS/Vendor Number

Jesse Slaughter, Sheriff

4. Typed Name and Title of Authorized Representative

5. Signature

6. Date

12/10/2020

December 22, 2020

Contract #20-206

Agenda Action Report
Prepared for the
Cascade County Commission

ITEM: Contract for DPHHS Grant Project Title: DPHHS
Contract for Paralegal Services #20213PARA0001

INITIATED AND PRESENTED BY: Carey Ann Haight, Deputy County Attorney

ACTION REQUESTED: Approval of Contract 20-206

BACKGROUND:

The Cascade County Attorney's Office presented the Board of County Commissioners with a Contract Modification for DPHHS Grant Project Title: DPHHS Contract for Paralegal Services Contract Number: 20143PARA0001 for commission action at its July 28, 2020 commission meeting. Following the commission's approval of that modification, which was Cascade County Contract 20-106, the County Attorney's Office forwarded the signed contract to the Department for it to sign. At that time, the Department realized that it did not intend for the modification to be for a 5-year term, but instead intended a 1-year term – which is their customary practice. Accordingly, a corrected Cascade County Contract 20-106 reflecting a one-year term providing financial support to the Cascade County Attorney's Office for paralegal work on Youth In Need of Care Cases was adopted on August 25, 2020.

Since that time DPHHS has been engaged in contract discussions with Missoula County. The off-shoot of those negotiations has caused DPHHS to authorize an increase in funding to Cascade County which is equal to the actual costs of the employee performing the paralegal work in Youth In Need of Case Cases. The new agreement supplants Cascade County Contract 20-106 and is retroactive to July 1, 2020. Except for the financial increase, all other terms of Contract 20-106 remain the same.

RECOMMENDATION: Approval of Contract 20-206.

TWO MOTIONS PROVIDED FOR CONSIDERATION:

MOTION TO APPROVE:

Mr. Chair, I move that the Commission **APPROVE** Contract 20-206, a Contract for DPHHS Grant Project Title: DPHHS Contract for Paralegal Services Contract Number: 20213PARA0001.

MOTION TO DISAPPROVE:

Mr. Chair, I move that the Commission **DISAPPROVE** Contract 20-206, a Contract for DPHHS Grant Project Title: DPHHS Contract for Paralegal Services Contract Number: 20213PARA0001.

**CONTRACT FOR PARALEGAL SERVICES
CHILD AND FAMILY SERVICES DIVISION**

CONTRACT NUMBER 20213PARA0001

THIS CONTRACT, is entered into between the Montana Department of Public Health and Human Services, (the "Department"), whose contact information is as follows: 301 S. Park Ave.; P.O. Box 8005, Helena, MT, 59604-8005, and Phone Number (406) 841-2400, and Fax Number (406) 841-2487, and Cascade County Attorney (the "Contractor"), whose contact information is as follows: Federal Tax ID 816001343, DUNS Number 010360493, 121 4th Street North Ste. 2A, Great Falls, MT, 59401, Phone Number (406) 454-6915, and Fax Number (406) 454-6949; respectively (collectively, the "Parties").

RECITALS

Child and Family Services, the Department, contracts with Cascade County Attorney to provide a dedicated paralegal to ensure that permanency plan hearings comply with federal regulations; ensure that court orders contain the proper language allowing federal fund recovery, ensure timely signatures by judges and perform administrative duties as required.

Therefore, in consideration of the foregoing recitals, covenants, terms and conditions set forth herein, the Parties agree as follows:

SECTION 1. SERVICES/SCOPE OF WORK

- A. This Contract constitutes the basic agreement between the parties for: The purpose of this contract is to enable the Department to meet federal IV-E requirements in judicial matters., (the "Services"), as more particularly described in Attachment A Scope of Work.
- B. Time is of the essence under this Contract.
- C. The Department and the Contractor, their employees, agents, contractors and subcontractors will cooperate with each other, and with other state or federal administrative agency employees, contractors and subcontractors at no charge for purposes relating to the delivery of and administration of the services to be delivered under this Contract.
- D. The Contractor will perform the Services in accordance with all of the provisions of the Contract, which consists of the following documents:
 - 1. Contract (this instrument)
 - 2. Attachment A: Scope of Work
 - 3. Attachment B: Budget
 - 4. Attachment C: Federal and State Law Requirements
 - 5. Attachment D: Insurance Requirements
 - 6. Attachment E: Assurances
 - 7. Attachment F: Dark Money Disclosure Declaration

SECTION 2. TERM OF CONTRACT

The term of this Contract is from July 1, 2020 through June 30, 2021 unless terminated in accordance with the Contract. Renewals of this Contract, by written agreement of the parties, may be made at one-

year intervals, or any interval that is agreed upon by both parties. The Contract may not be renewed for more than a total of 7 years.

SECTION 3. CONSIDERATION AND PAYMENTS

Subject to the terms and conditions contained in this Contract, the Department will pay the Contractor for the Services as follows:

A. Other Programs as Payers for Services – Non-Duplication of Payment

The Contractor may not seek compensation from monies payable through this Contract for the costs of goods and services that may be or are reimbursed, in whole or in part, from other programs and sources.

B. Billing Procedures and Requirements

Payment shall be made pursuant to the following specified payment/fee schedule in Attachment A.

1. Payment to the Contractor shall be made to:
Cascade County Attorney
121 4th Street North Ste. 2A
Great Falls, MT, 59401
2. The Contractor must bill in accordance with the procedures and requirements the Department identifies and must itemize all services and expenses for reimbursement.

C. Adjustments to Consideration

The Department may adjust the consideration provided to the Contractor under this Contract based on any reductions of funding, governing budget, erroneous or improper payments, audit findings, or failings in the Contractor's delivery of services. The Department will communicate perceived failings to the Contractor and Contractor will have an opportunity to address those concerns prior to adjustments in consideration for failings in the Contractor's delivery of services.

D. Sources of Funding

The sources of the funding for this Contract are 77.2% from the state general fund and, for the balance, 22.8% federal funding.

E. Erroneous and Improper Payments

The Contractor may not retain any monies the Department pays in error or which the Contractor, its employees, or its agents improperly receive. The Contractor must immediately notify the Department if it determines a payment may be erroneous or improper, and must return that payment within 30 days of the Department requesting its return. If the Contractor fails to return to the Department any erroneous or improper payment, the Department may recover such payment by any methods available under law or through this Contract, including deduction of the payment amount from any future payments to be made to the Contractor.

F. Final Payment

The Department will issue the final payment to the Contractor for the Services when the Department has accepted the Services and determined that the Contractor has met all of its Contract performance obligations satisfactorily.

G. Tax Exemption

State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].

H. Personal Property Tax

All personal property taxes will be paid by Contractor.

SECTION 4. COST ADJUSTMENTS

Cost Increase by Mutual Agreement. After the Contract's initial term and if the Department agrees to a renewal, the parties may agree upon a cost increase. The Department is not obligated to agree upon a renewal or a cost increase. Any cost increases must be based on demonstrated industry-wide or regional increases in Contractor's costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all Urban Consumers may be used to determine the increased value.

SECTION 5. WARRANTIES

Warranty of Services. Contractor warrants that the services provided conform to the Contract requirements, including all descriptions, specifications and attachments made a part of this Contract. The Department's acceptance of services provided by Contractor shall not relieve Contractor from its obligations under this warranty. In addition to its other remedies under this Contract, at law, or in equity, The Department may require Contractor to promptly correct, at Contractor's expense, any services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this Contract in the manner and to the same extent as services originally furnished.

SECTION 6. CREATION AND RETENTION OF RECORDS

- A. The Contractor must maintain all records, (written, electronic or otherwise) documenting compliance with the requirements of this Contract and its attachments, and with state and federal law, relating to performance, monetary expenditures and finances during the term of this Contract and for 8 years after its completion date. The obligation to maintain records required by this paragraph survives the termination or expiration of this Contract.
- B. If any litigation, reviews, claims or audits concerning the records related to the performance of the Contract is begun, then the Contractor must continue to retain records until such activity is completed.
- C. The Contractor must provide the Department and its authorized agents with reasonable access to records the Contractor maintains for purposes of this Contract. The Contractor must make the records available at all reasonable times at the Contractor's general offices or other location as agreed to by the parties.

SECTION 7.

ACCOUNTING, COST PRINCIPLES, AND AUDIT

A. Accounting Standards

The Contractor must maintain a system of accounting procedures and practices sufficient for the Department to determine to its satisfaction that the system (1) permits timely development of all necessary cost data in the form contemplated by the contract type, and (2) is adequate to allocate costs in accordance with Generally Accepted Accounting Principles.

B. Audits and Other Investigations

The Department and any other legally authorized federal and state entities and their agents may conduct administrative activities and investigations, including audits, to ensure the appropriate administration and performance of this Contract, and the proper expenditure of monies, delivery of goods, and provision of Services pursuant to this Contract. The Contractor will provide the Department and any other authorized governmental entity and their agents access to and the right to record or copy any and all of the Contractor's records, materials and information necessary for the conduct of any administrative activity, investigation or audit. Administrative activities and investigations may be undertaken, and access shall be afforded under this section from the time the parties enter this Contract until the expiration of 8 years from the completion date of this Contract.

C. Corrective Action

If directed by the Department, the Contractor must take corrective action to resolve audit findings. The Contractor must prepare a corrective action plan detailing actions the Contractor proposes to undertake to resolve the audit findings. The Department may direct the Contractor to modify the corrective action plan.

D. Reimbursement for Sums Owing

The Contractor must reimburse or compensate the Department in any other manner as the Department may direct for any sums of monies determined by any administrative activity, investigation or audit to be owing to the Department.

E. The Contractor must comply with the federal audit and cost accounting requirements set forth in 45 CFR Part 75 and 2 CFR Part 300.

The Contractor shall provide a mitigation plan for all reported deficiencies. Major and critical deficiencies must be corrected within forty (40) calendar days of the report submission to the Department.

SECTION 8.

ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

A. The Contractor will not assign, transfer, delegate or subcontract any right or duty arising under this Contract without prior written approval from the Department.

B. Any assignment, transfer, delegation, or subcontracting of the Contractor's rights or duties under this Contract does not relieve the Contractor from its responsibility and liability for performance of all Contractor obligations under this Contract. The Contractor will be as fully responsible for the acts or omissions of any subcontractor as it is for its own acts or omissions.

SECTION 9.

INDEMNIFICATION

- A. The Contractor, at its sole cost and expense, must indemnify, defend, and hold harmless the State of Montana against any allegations of liability of any kind, relating to personal injury, death, damage to property, or any other legal obligation and any resulting judgments, losses, damages, liability, penalties, costs, fees, cost of legal defense and attorney's fees, to the extent caused by or arising out of Contractor's performance of services under this Contract or in any way resulting from the acts or omission of Contractor, and/or its agents, employees, representatives, assigns, and subcontractors.
- B. The Department must give the Contractor notice of any allegation of liability and at the Contractor's expense the Department shall cooperate in the defense of the matter.
- C. If the Contractor fails to fulfill its obligations as the indemnitor under this section, the Department may undertake its own defense. If the Department undertakes its own defense, the Contractor must reimburse the Department for any and all costs to the Department resulting from settlements, judgments, losses, damages, liabilities, and penalties and for all the costs of defense incurred by the Department including but not limited to attorney fees, investigation, discovery, experts, and court costs.

SECTION 10.

LIMITATIONS OF STATE LIABILITY

- A. Any liabilities of the State of Montana and its officials, employees and agents are governed and limited by the provisions of Title 2, Chapter 9, MCA, for all acts, omissions, negligence, or alleged acts or omissions, negligent conduct, and alleged negligent conduct related to this Contract.
- B. The Department shall not be liable, regardless of the form of action, whether in contract, tort, negligence, strict liability or by statute or otherwise, for any claim related to or arising under this Contract for consequential, incidental, indirect, special, or exemplary damages, including without limitation lost profits and lost business opportunities.

SECTION 11.

INSURANCE COVERAGE

Without limiting any of Contractor's obligations hereunder, Contractor must carry insurance coverage in accordance with the requirements stated in Attachment D, Insurance Requirements, attached hereto and incorporated herein by reference.

SECTION 12.

CONFLICTS OF INTEREST

The Contractor must not have any conflict of interest regarding the performance of the Services under this Contract. The Contractor may not enter into any contract or other arrangement for the use, purchase, sale lease or rental of real property, personal property or services funded with monies of this Contract if an employee, administrator, officer or director of the Contractor may receive a financial or other valuable benefit as a result. The Department may grant exceptions to this prohibition where it determines the particular circumstances warrant the granting of an exception.

SECTION 13.

COMPLIANCE WITH LAWS/WARRANTIES

- A. The Contractor must comply with all state and federal laws, rules, regulations, ordinances, and executive orders applicable to the performance of the Services under this Contract. Attachment

C to this Contract contains a list of state and federal authorities. The Contractor must assure that all subcontractors comply with all applicable laws.

- B. Civil Rights. The Contractor may not discriminate in any manner against any person on the basis of race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, sexual orientation, political beliefs, genetic information, veteran's status, culture, social origin or condition, ancestry, or an individual's association with individuals in any of the previously mentioned protected classes in the performance of this Contract or in the delivery of Montana State services or funding on behalf of the State of Montana.
- C. The Contractor must submit the assurances, where applicable, set forth in Attachment E and attached as Attachment E, to this Contract prior to commencement of work under this Contract.
- D. The Contractor represents and warrants that the Contractor is legally authorized under state and federal business and tax legal authorities to conduct business in accordance with this Contract.
- E. The Contractor represents and warrants that it is an independent contractor and that its employees, agents and subcontractors are not employees of the State of Montana. The Contractor may not in any manner represent or maintain the appearance of being employees of the State of Montana.
- F. The Contractor must comply with all applicable Workers' Compensation requirements.
- G. The Contractor must pay all state, federal, social security, unemployment insurance, and all other taxes, assessments, or contributions due and payable to the State of Montana and/or the United States in connection with the Services to be performed under this Contract. The Contractor must hold the State of Montana harmless from any liability on account of any such taxes or assessments.
- H. The following information may be required pursuant to 2 CFR 200:
 - 1. Sub recipient name: Insert Subrecipient Name
 - 2. Sub recipient Unique Entity Identifier: Insert DUNS Number
 - 3. FAIN number: Insert FAIN Number
 - 4. Federal award date: Insert Date
 - 5. Federal award start and end date: Insert Dates
 - 6. Total amount of funds obligated with this action: \$Insert Amount
 - 7. Amount of funds obligated to sub recipient: \$Insert Amount
 - 8. Total amount of the federal award: \$Insert Amount
 - 9. Project description: Insert Description
 - 10. Awarding agency/pass-through entity/contact info: Insert Entity/Contact Info
 - 11. CFDA number/name: Insert Number/Name
 - 12. Research and Development: Insert Yes/No
 - 13. Indirect cost rate: Insert Rate

SECTION 14.

REGISTRATION OF OUT OF STATE ENTITIES

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are domiciled in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with 35-1-1026 and

35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

SECTION 15. OWNERSHIP OF DATA AND DOCUMENTS

All data, information, work in progress, documents, reports, patents or copyrights developed in connection with any services under this Contract or information provided to the Contractor, both in hard-copy form and as may embodied on any recording and storage media, is deemed Department property and, upon request at the termination or expiration of this Contract, shall be delivered to the Department.

SECTION 16. CONFIDENTIALITY

A. Personal Information

1. During the term of this Contract, the Contractor, its employees, subcontractors and agents must treat and protect as confidential all material and information the Department provides to the Contractor or which the Contractor acquires on behalf of the Department in the performance of this Contract which contains the personal information of any person.
2. In its use and possession of personal information, the Contractor must conform to security standards and procedures meeting or exceeding current best business practices. Upon the Department's request, the Contractor will allow the Department to review and approve any specific security standards and procedures of the Contractor.

B. Notice by Contractor of Unauthorized Disclosures or Uses of Personal Information

Immediately upon discovering any unauthorized disclosure or use of personal information by the Contractor, its employees, subcontractors, agents, the Contractor must confidentially report the disclosure or use to the Department in detail, and must undertake immediate measures to retrieve all such personal information and to prevent further unauthorized disclosure or use of personal information.

C. Notice by Contractor of Investigations, Complaints, Litigation Concerning the Use and Protection of Personal Information

1. The Contractor must provide the Department with written notice within five workdays of the Contractor receiving notice of any administrative action or litigation threatened or initiated against the Contractor based on any legal authority related to the protection of personal information.
2. With its notice, the Contractor must provide the Department with copies of any relevant correspondence, pleadings, papers, administrative or legal complaints and determinations.

D. Contract Information

The Contractor must hold in strict confidence any data, findings, results, or recommendations obtained or developed by the Contractor in connection with the Services under this Contract, including but not limited to, information and data given to the Contractor by the Department, its agents or contractors or any other source.

E. Access/Use of Confidential Information

The Contractor may not access or use personal, confidential, or other information obtained through the Department, its agents and contractors, unless the Contractor does so:

1. in conformity with governing legal authorities and policies;
2. with the permission of the persons or entities to whom or which the information pertains; and
3. with the review and approval by the Department prior to use, publication or release.

F. The information contained within this Contract and attachments, inclusive of Contractor's proposal and its attachments, if any, and information otherwise provided to the Department in relation to this contractual relationship is not confidential and is available for public inspection and copying unless determined in accordance with federal or state law to be confidential as personal consumer, recipient or employee information or as business/corporate proprietary information that is protected from release. To any extent required or allowed by law, the Department has the right to use for public purposes and to disclose to the public contractual information inclusive of reports, evaluations, statistics, and other management and performance information related to this Contract.

SECTION 17. PROPRIETARY INFORMATION

- A.** Before the Department can recognize a business/corporate claim of confidential trade secret or proprietary information, the Contractor must identify and segregate the information for which the claim is being asserted and must have provided a detailed legal analysis supporting the claim of confidentiality. The Contractor must include with that claim an affidavit of legal counsel on the form provided by the Department, titled "AFFIDAVIT FOR PROPRIETARY INFORMATION CONFIDENTIALITY," attesting to legal counsel's legal relationship to the Contractor, acknowledging the primacy of federal and Montana law with respect to the claim, and indemnifying the Department with respect to defense and warranting the Contractor's responsibility for all legal costs and attorneys' fees, should the Department accept the claim as legitimate and as a result be subjected to administrative or legal contest.
- B.** The Department will provide the Contractor timely notice of any administrative or legal request or contest from a third party seeking release of contractual and related information for which the Contractor has properly made a claim that the information is confidential as trade secret or proprietary information. If the Department determines that such information is subject to the public right to know and must be released as requested, the Department will provide the Contractor with notice of the intended release five working days prior to the date of the proposed release. The notice period is intended to allow the Contractor to make arrangements, if desired, to intervene through an appropriate legal forum to contest the release.

SECTION 18. COMPLIANCE WITH DARK MONEY SPENDING DISCLOSURE REQUIREMENTS

Contractor shall comply with the provisions of the State of Montana Executive Order No. 15-2018. Contractor shall annually submit a declaration form to the contract liaison. Declaration forms can be found at: <http://spb.mt.gov/Procurement-Guide> or <http://spb.mt.gov/Laws-Rules>.

Contractor shall also annually submit a disclosure form to the contract liaison as required. Disclosure forms can be found at: <http://spb.mt.gov/Procurement-Guide> or <http://spb.mt.gov/Laws-Rules>.

All disclosures must be submitted to the Department for reporting on <https://transparency.mt.gov>. Failure to comply with these requirements may result in contract termination. Contractor agrees that such a failure is a material breach of this Contract.

SECTION 19. PUBLICITY AND DISCLAIMERS

- A. The Contractor may not use monies under this Contract to pay for media, publicity or advertising that in any way associates the services or performance of the Contractor or the Department under this Contract with any specific political agenda, political party candidate for public office, or any matter to be voted upon by the public. Media includes but is not limited to commercial and noncommercial print, verbal and electronic media.
- B. The Contractor must inform any people to whom it provides consultation or training services under this Contract that any opinions expressed do not necessarily represent the position of the Department. All public notices, information pamphlets, press releases, research reports, posters, public service announcements, web sites and similar modes of presenting public information pertaining to the services and activities funded with this Contract prepared and released by the Contractor must include the statement:

"This project is funded in whole or in part under a Contract with the Montana Department of Public Health and Human Services. The statements herein do not necessarily reflect the opinion of the Department."

- C. The Contractor must state the percentage and the monetary amount of the total program or project costs of this Contract funded with (a) federal monies and (b) non-federal monies in all statements, press releases, and other documents or media pieces made available to the public describing the services provided through this Contract.
- D. Before the Contractor uses, publishes, releases or distributes them to the public or to local and state programs, the Department must review and approve all products, materials, documents, publications, press releases and media pieces (in any form, including electronic) the Contractor or its agents produce with contract monies to describe and promote services provided through this Contract.

SECTION 20. ACCESS TO PREMISES

The Contractor must provide the State of Montana and any other legally authorized governmental entity, or their authorized representatives, the right to enter at all reasonable times the Contractor's premises or other places where contractual performance occurs to inspect, monitor or otherwise evaluate contractual performance. The Contractor must provide reasonable facilities and assistance for the safety and convenience of the persons performing these duties. All inspection, monitoring and evaluation must be performed in such a manner as not to unduly interfere with contractual performance.

SECTION 21. LIAISON AND SERVICE OF NOTICES

Robin Graham, Phone Number (406) 841-2457, Fax Number (406) 841-2487, Robin.Graham@mt.gov, or their successor, is the liaison for the Department. Joshua Racki, Phone Number (406) 454-6915, Fax Number (406) 454-6949, jracki@cascadecountymt.gov is the Contract Manager for the Contractor. These persons serve as the primary contacts between the parties regarding the performance of this Contract. Written notices, reports and other information required to be exchanged between the parties must be directed to the liaison at the parties' addresses set out in this Contract.

SECTION 22. IDENTIFICATION/SUBSTITUTION OF PERSONNEL

The personnel identified or described in Contractor's proposal shall perform the services provided for the Department under this Contract. Contractor agrees that any personnel substituted during the term of this Contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. The Department reserves the right to approve Contractor personnel assigned to work under this Contract and any changes or substitutions to such personnel. The Department's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve Contractor to perform and be responsible for its obligations under this Contract. The Department reserves the right to require Contractor personnel replacement. If Contractor personnel become unavailable, Contractor shall provide an equally qualified replacement in time to avoid delays to the work plan.

SECTION 23. MEETINGS

- A. Technical or Contractual Problems. Contractor shall meet with the Department's personnel, or designated representatives, to resolve technical or contractual problems occurring during the Contract term or to discuss the progress made by Contractor and the Department in the performance of their respective obligations, at no additional cost to the Department. The Department may request the meetings as problems arise and will be coordinated by the Department. The Department shall provide Contractor a minimum of three full working days' notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the Contract.
- B. Progress Meetings. During the term of this Contract, the Department's Project Manager shall plan and schedule progress meetings with Contractor to discuss Contractor's and the Department's progress in the performance of their respective obligations. These progress meetings will include the Department's Project Manager, Contractor's Project Manager, and any other additional personnel involved in the performance of this Contract as required. At each meeting, Contractor shall provide the Department with a written status report that identifies any problem or circumstance encountered by Contractor, or of which Contractor gained knowledge during the period since the last such status report, which may prevent Contractor from completing any of its obligations or may generate charges in excess of those previously agreed to by the parties. This may include the failure or inadequacy of the Department to perform its obligation under this Contract. Contractor shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and the steps taken to remedy the same.
- C. Failure to Notify. If Contractor fails to specify in writing any problem or circumstance that materially affects the costs of its delivery of services or products, including a material breach by

the Department, about which Contractor knew or reasonably should have known with respect to the period during the term covered by Contractor's status report, Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope.

SECTION 24. FORCE MAJEURE

If the Contractor or the Department is delayed, hindered, or prevented from performing any act required under this Contract by an occurrence beyond the control of the asserting party including, but not limited to, theft, fire, or public enemy, severe and unusual weather conditions, injunction, riot, strikes, lockouts, insurrection, war, or court order and the asserting party gives prompt written notice of the event to the other party, then performance of the act shall be excused for the period of the delay, to the extent the performance is actually affected and the asserting party resumes performance as soon as practicable. Matters of the Contractor's finances shall not be considered a force majeure.

SECTION 25. CONTRACT TERMINATION

- A. The Department may terminate this Contract without cause and in lieu of any or all other remedial measures available through this Contract. The Department terminating without cause must give written notice of termination to the Contractor at least sixty (60) days prior to the effective date of termination. In the event of such termination without cause, the Contractor shall be paid for all Services rendered satisfactorily to the termination date and for any direct costs (not including anticipated profits) incurred by the Contractor as a result of the termination. Such payment shall constitute the Contractor's sole right and remedy. The Department has the right to terminate without cause even when a condition of force majeure exists.
- B. The Department may immediately terminate this Contract if the Contractor engages in any violation of state or federal law listed in this Contract or any Attachment to this Contract, or which otherwise may be applicable to the Contract arising from the performance of Services under this Contract. The Department will communicate perceived violations of law to the Contractor and Contractor will have an opportunity to address those concerns prior to termination pursuant to this provision.
- C. The Department may terminate this Contract in whole or in any aspect of performance under this Contract if:
 - 1. federal or state funding for this Contract becomes unavailable or reduced for any reason; or
 - 2. the Department determines that the Contractor is failing to perform in accordance with the terms of this Contract. In such event, the Department shall give Contractor written notice of breach and an opportunity to cure the breach. Contractor will correct the breach within 30 calendar days of receipt of such notice unless the cure period is otherwise specified in the written notice of breach. If the breach is not corrected timely, this Contract may be terminated immediately, in whole or in part, by written notice from the Department to Contractor. The option to terminate shall be at the sole discretion of the Department.
- D. Upon expiration, termination or cancellation of this Contract, or any portion of this Contract, the Contractor must assist the Department, its agents, representatives and designees in closing out this Contract, and in providing for the orderly transfer of contract responsibilities and the continued delivery of contract services by the Department or its designee, and shall allow the

Department access to the Contractor's facilities, records and materials to fulfill these requirements.

- E. Event of Breach by Contractor. Subject to the notice and opportunity to cure requirements set forth herein, any one or more of the following Contractor acts or omissions constitute an event of material breach under this Contract:
1. Products or services furnished fail to conform to any requirement;
 2. Failure to submit any report required by this Contract;
 3. Failure to perform any of the other terms and conditions of this Contract, including but not limited to beginning work under this Contract without prior Department approval or breaching Technical or Contractual Problems, obligations; or
 4. Voluntary or involuntary bankruptcy or receivership.
- F. Event of Breach by the Department. The Department's failure to perform any material terms or conditions of this Contract constitutes an event of breach.
- G. Actions in Event of Breach. Upon Contractor's material breach, the Department may:
1. Terminate this Contract under Termination for Cause or Convenience and pursue any of its remedies under this Contract, at law, or in equity; or
 2. Treat this Contract as materially breached and pursue any of its remedies under this Contract, at law, or in equity.

Upon the Department's material breach, Contractor may:

1. Terminate this Contract under Termination for Cause with Notice to Cure, and pursue any of its remedies under this Contract, at law, or in equity; or
2. Treat this Contract as materially breached and, except as the remedy is limited in this Contract, pursue any of its remedies under this Contract, at law, or in equity.

SECTION 26. ADDITIONAL REMEDIES

A. Withholding Payments

If the Contractor fails to perform the services in conformance with the requirements of this Contract, the Department has the right, with notice, to withhold any and all payments directly related to the non-compliant services. The Department may withhold any payments due to the Contractor, without penalty or work stoppage by Contractor, until the Contractor cures performance to the satisfaction of the Department. The Contractor is not relieved of its performance obligations if any payment is withheld.

B. Reductions in Payments Due

Amounts owed to the Department by the Contractor under this Contract, including but not limited to liquidated or other damages, or claims for damages, may be deducted or set-off by Department from any money payable to Contractor pursuant to this Contract.

- C. If, in the Department's reasonable judgment, a default by Contractor is not so substantial as to require termination of the entire Contract, reasonable efforts to induce the Contractor to cure the default are unavailing, the Contractor fails to cure such default within 30 calendar days of receipt of notice from the Department, and the default is capable of being cured by the Department or

by another resource without unduly interfering with continued performance by the Contractor, the Department, without prejudice to any other remedy it may have, may terminate performance of the particular service that is in default and provide or procure the services reasonably necessary to cure the default. In the event of a termination for failure to perform, Department will, without limiting its other available remedies, have the right to procure the terminated services and the Contractor will be liable for: (i) the cost difference between the cost of the terminated services and the costs for the replacement services acquired from another vendor or expended by Department, and (ii) if applicable, the following administrative costs directly related to the replacement of this Contract: costs of competitive bidding, mailing, advertising and staff time costs.

D. Stop Work Order

1. The Department may, at any time, by written stop work order to the Contractor, require the Contractor to stop any or all parts of the work required by this Contract for the period of days indicated by the Department after the stop work order is delivered to Contractor. The stop work order must be specifically identified as a stop work order issued under this section. Upon receipt of the stop work order, the Contractor must immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage.
2. If a stop work order issued under this section is canceled or the period of the stop work order, or any extension expires, the Contractor must resume contractual performance. The Department, as may be necessary, must adjust through amendment to this Contract the delivery schedule or reimbursement, or both.

E. Right to Assurance

If the Department, in good faith, has reason to believe that the Contractor does not intend to, or is unable to perform or has refused to perform or continue performing all material obligations under this Contract, the Department may demand in writing that the Contractor give a written assurance of intent to perform. Failure by Contractor to provide written assurance within the number of days specified in the demand (not less than five business days) may, at the Department's option, be the basis for terminating this Contract under the terms and conditions or other rights and remedies available by law or provided by this Contract.

- F.** Any remedies provided by this Contract are not exclusive and are in addition to any other remedies provided by law.

SECTION 27. CHOICE OF LAW, REMEDIES AND VENUE

- A.** This Contract is governed by the laws of the State of Montana.
- B.** For purposes of litigation concerning this Contract, venue must be in the First Judicial District in and for the County of Lewis and Clark, State of Montana.
- C.** If there is litigation concerning this Contract, the Contractor must pay its own costs and attorney fees.
- D.** This Contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

SECTION 28.**GENERAL**

- A. No statements, promises, or inducements made by the parties or their agents are valid or binding if not contained in this Contract and the materials expressly referenced in this Contract as governing the contractual relationship.
- B. The headings to the section of this Contract are convenience of reference and do not modify the terms and language of the sections to which they are headings.
- C. Except as may be otherwise provided by its terms, this Contract may not be enlarged, modified or altered except by written amendment signed by the parties to this Contract.
- D. If there is a dispute as to the duties and responsibilities of the parties under this Contract, this Contract along with any attachments prepared by the Department, including request for proposal, if any, govern over the Contractor's proposal, if any.
- E. If a court of law determines any provision of this Contract is illegal, all other provisions of this Contract remain in effect and are valid and binding on the parties.
- F. Any provision of this Contract that is determined to conflict with any federal or state law or regulation, is inoperative to the extent it conflicts with that authority and is to be considered modified to the extent necessary to conform with that authority.
- G. Waiver of any default, breach or failure to perform under this Contract may not be construed to be a waiver of any subsequent default, breach or failure of performance. In addition, waiver of a default, breach or failure to perform may not be construed to be a modification of the terms of this Contract unless reduced to writing as an amendment to this Contract.
- H. This Contract may be executed in counterparts, which together will constitute one instrument.

The parties through their authorized agents have executed this Contract on the dates set out below.

MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

BY: _____
Mick Leary, Program Bureau Chief

Date: _____

CASCADE COUNTY ATTORNEY

BY: _____
Joshua Racki, Cascade County Attorney

Date: _____

CONTRACTOR

BY: _____
Cascade County Commissioner

Date: _____

BY: _____
Cascade County Commissioner

Date: _____

BY: _____
Cascade County Commissioner

Date: _____

SCOPE OF WORK

- A. The Contractor agrees to hire a full-time paralegal to provide the following services to the Department:
 - 1. Provide paralegal services to Cascade County deputy county attorneys to assist in dependent neglect cases filed on by Cascade County deputy attorneys on behalf of DPHHS Child and Family Services Division.
 - 2. Perform administrative duties as required, to include but not be limited to, copying and proper distribution of court orders.
- B. The Contractor will report expenses and services monthly or as needed. The reports shall be submitted to the Department's liaison for program matters no later than the last day of the month following the end of each quarter of the contract year. All contract billing will be reviewed and approved by CFSD Program Bureau staff prior to being sent to CFSD Fiscal Bureau to issue payment. All necessary back-up documentation for all billing will be submitted with invoices. CFSD Fiscal Bureau has staff with separate roles for entering and approving contract payments in AWACS.

BUDGET**BUDGET**

Paralegal – FTE (2080 @ \$18.7170) \$38,931.36

Fringe for Paralegal – FY20 \$14,545.856

Total for one paralegal \$53,477.216

The foregoing budget is based upon the current hourly rate and costs attributable to the employee who is performing the grant related work, as outlined below:

Description	Rate	Amount per Hour
Base Hourly Rate	\$18.7170/hr	\$18.7170
FICA – Soc Sec & Med	7.65%	\$1.4319
Workers' Compensation	0.3%	\$0.0562
Unemployment	0.35%	\$0.0655
PERS	8.77%	\$1.6415
Teamster Clerical Pension	\$0.25/hr	\$0.25
Employer Paid Insurance Premium	\$615/month	\$3.5481
Total Cost Per Hour		\$25.7102

Rev. 4/2019

FEDERAL AND STATE LAW REQUIREMENTS**A. Compliance with Federal Authorities**

Contractor assures that it and any of its subcontractors will comply with all federal laws, regulations, and executive orders, that are applicable to this Contract, to include the provisions of the below referenced laws, regulations and executive orders. The list is not intended, nor must it be construed, as a listing of all federal authorities with which Contractor must comply for the purposes of the Contract, or that Contractor must comply with each of the authorities listed. The Contractor is responsible for determining with which federal authorities it must comply in the performance of the Contract.

1. Civil Rights Act of 1964 (42 U.S.C. § 2000d, *et seq.*), prohibiting discrimination based on race, color, or national origin.
2. Age Discrimination Act of 1975 (42 U.S.C. § 6101, *et seq.*), prohibiting discrimination based on age.
3. Education Amendments of 1972 (20 U.S.C. § 1681), prohibiting discrimination based upon gender.
4. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), prohibiting discrimination based upon disability.
5. Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, *et seq.*), prohibiting discrimination based upon disability.
6. Vietnam-Era Veterans Readjustment Assistance Act (38 U.S.C. § 4212), prohibiting discrimination in employment against protected veterans and requiring affirmative actions of recruit and employ protected veterans.
7. The Federal Executive Orders 11246, 11478, and 11375 and 41 CFR Part 60, requiring equal employment opportunities in employment practices.
8. Executive Order No. 13166 requiring facilitation of access for persons with limited English proficiency to federally funded services.
9. False Claims Act, 31 U.S.C. §§ 3729-3733 (the "Lincoln Law"), prohibiting recipients of federal payments from submitting a false claim for payment.
10. Sherman Anti-Trust Act, 15 U.S.C. §§ 1-7m prohibiting any contract, trust, or conspiracy in restraint of interstate or foreign trade.
11. Anti-Kickback Act of 1986, 41 U.S.C. §§ 51-58 and the Anti-Kickback Statute, 42 U.S.C. §§ 1320(a)-(7)a, prohibiting the exchange or offer to exchange anything of value to induce the referral of federal health care program business.
12. Debarment and Suspension (Executive Orders 12549 and 12689, 2 CFR 180 and 2 CFR Subtitle B, Chapter III Part 300) prohibiting contract awards to parties listed on government-wide exclusions in the System for Award Management (SAM). SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
13. Whistleblower Protection Act, 10 U.S.C. 2409, 41 U.S.C. 4712, and 10 U.S.C. 2324, 41 U.S.C. 4304 and 4310, requiring compliance with statutory requirements for whistleblower protections.
14. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), prohibiting the use of federal funds to pay for any person or organization for influencing or attempting to influence an officer or

- employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.
15. Drug-Free Workplace Act of 1988, 41 U.S.C. §701, et. seq., requiring all organizations receiving federal monies to maintain a drug-free workplace.
 16. Federal Funding Accountability and Transparency Act of 2006, requiring reporting of subawards and executive compensation;
 - a. First-tier Subawards.

All recipients, unless exempt as provided in paragraph D, must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity. Recipients must report the information about each obligating action in accordance with the submission instructions posted at www.fsrs.gov.
 - b. Total Compensation of Recipient Executives.
 - i. All recipients must report total compensation for each of the five most highly compensated executives for the preceding completed fiscal year, if,
 - (1) the total Federal funding authorized to date under this award is \$25,000 or more; in the preceding fiscal year, recipients received: Eighty percent or more of the annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFF 170.320 (and subawards); and
 - (2) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (3) The public does not have access to information about the compensation of the executives through periodic reports filed under the Securities Exchange Act of 1934 and Internal Revenue Code of 1986.
 - ii. Where and when to report. Recipients must report executive total compensation described in paragraph b.1 of this award term:
 - (1) The Contractor is to submit the Compensation Report to the Department by the end of the month following the month in which the total of the monies obligated through this Contract is at \$25,000 or more, whether occurring at the time of signing or at some later date due to a contractual amendment. The Contractor must continue to submit the Compensation Report annually during the term of the Contract on the anniversary of the initial date of submittal, even if the total consideration for the Contract is later amended to be less than \$25,000.
 - (2) The Contractor will submit the Compensation Report to the Department by first-class mail addressed as follows or via email:
DPHHS
Attn: BFSDF-FATA Reporting
PO Box 4210

c. Total Compensation of Subrecipient Executives.

All recipients unless exempt as provided in paragraph d. of this award term, for each first-tier subrecipient. Recipients must report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if

- i. in the subrecipient's preceding fiscal year, the subrecipient received:
 - (1) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (2) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - (3) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

d. Exemptions. All recipients' gross income, from all sources of the previous tax year, under \$300,000, are exempt from the requirements to report:

- i. Subawards, and
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

17. Disclosure of Ownership and Control Information pursuant to 42 C.F.R. §§ 455.104, 455.105, and 455.106, requiring disclosures of ownership and control, business transactions, and persons with criminal convictions in connection with the delivery of Medicaid funded services.
18. Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Information Technology For Economic And Clinical Health of 2009 (HITECH), requiring compliance with privacy, security, electronic transmission, coding and other requirements applicable to Covered Entities or a Business Associate as defined for purposes of the acts.
19. Patient Protection and Affordable Care Act – P.L. 111-148
20. Section 1557 of the Affordable Care Act and 45 CFR Part 92, prohibiting discrimination in health programs and activities any part of which receives Federal financial assistance.

B. Compliance with State of Montana Authorities.

Contractor assures that it and any of its subcontractors will comply with all State of Montana laws, rules, ordinances and executive orders, that are applicable to this Contract, to include the provisions of the below referenced laws. The list is not intended, nor must it be construed, as a listing of all state authorities with which Contractor must comply for the purposes of the Contract, or that Contractor must comply with each of the authorities listed. Contractor is responsible for determining with which state authorities it must comply in the performance of the Contract.

1. Montana False Claims Act, Title 17, Chapter 8, part 4, MCA.

2. Montana Anti-Trust laws – §30-14-201, MCA, et. seq.
3. Montana Human Rights Act Title 49 MCA
4. Montana Governmental Code of Fair Practices Title 49, Chapter 3

INSURANCE REQUIREMENTS

I. Insurance.

Contractor shall maintain for the duration of the Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission. The certificates must name the State of Montana Department of Public Health and Human Services as certificate holder and Contractor shall provide copies of additional insured endorsements required by Contractor's commercial general liability and automobile liability policies.

II. Primary Insurance.

Contractor's insurance coverage shall be primary insurance with respect to the Department, its officers, officials, employees, and volunteers, and shall apply separately to each project or location. Any insurance or self-insurance maintained by the Department, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

III. Insurance Requirements.

Specific Requirements for Compliance with Workers' Compensation Act: Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire contract term and any renewal. Upon expiration, a renewal document must be submitted.

Specific Requirements for Commercial General Liability: Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage, of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor's officers, agents, representatives, assigns, or subcontractors.

Additional Insured Status: The Department, its officers, officials, employees, and volunteers are to be covered as additional insureds; for liability arising out of activities performed by or on behalf of the Contractor, including the State of Montana's general supervision of the Contractor; products and completed operations; and premises owned, leased, occupied, or used.

Specific Requirements for Automobile Liability: The Contractor shall purchase and maintain occurrence coverage with split limits of \$500,000 per person (personal injury), \$1,000,000 per accident occurrence (personal injury), and \$100,000 per accident occurrence (property damage), (OR combined single limits of \$1,000,000 per occurrence) to cover such claims as may be caused by any act, omission, or negligence of the Contractor's officers, agents, representatives, assigns, or subcontractors.

Additional Insured Status: The Department, its officers, officials, employees, and volunteers are to be covered as additional insureds for automobiles owned, leased, hired, or borrowed by the Contractor.

Specific Requirements for Professional Liability: Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor's officers, agents, representatives, assigns or subcontractors.

IV. Deductibles and Self-Insured Retentions.

Any deductible or self-insured retention must be declared to and approved by the Department. At the request of the Department, either: 1) the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the Department, its officers, employees, or volunteers; or 2) at its own expense, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses. Note: The deductible/self-insured provision does not apply to political subdivisions of the state (i.e. counties, cities, towns, and school districts) under §2-9-211, MCA.

V. Certificates of Insurance.

Insurance is to be placed with an insurer with a Best's rating of no less than A-. Note: Best's ratings do not apply to political subdivisions of the state (i.e. counties, cities, towns, and school districts) under §2-9-211, MCA. All certificates and endorsements are to be received by the Department prior to the provision of a service or purchase of a product. Contractor must notify the Department immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The Department reserves the right to require complete copies of insurance policies or self-insured memorandums of coverage at all times.

ASSURANCES

DEPARTMENT'S ANNUAL CERTIFICATION

DPHHS GS-301
Rev. 5/2019

ANNUAL CERTIFICATION FOR DEPARTMENT OF PUBLIC HEALTH & HUMAN SERVICES OF THE CONTRACTOR'S COMPLIANCE WITH CERTAIN STATE AND FEDERAL REQUIREMENTS

This annual certification form is standardized for general use by the Department of Public Health and Human Services (Department) in contracting relationships. Not all of these assurances may be pertinent to the Contractor's circumstances. The Contractor in signing this form is certifying compliance only with those requirements that are legally or contractually applicable to the circumstances of the contractual relationship of the Contractor with the Department.

These assurances are in addition to those stated in the federal OMB 424B (Rev. 7-97) form, known as "ASSURANCES - NON-CONSTRUCTION PROGRAMS", issued by the federal Office of Management of the Budget (OMB). Standard Form 424B is an assurances form that must be signed by the Contractor if the Contractor is to be in receipt of federal monies.

There may be program specific assurances, not appearing either in this form or in the OMB Standard Form 424B, for which the Contractor may have to provide additional certification.

This form and OMB Standard Form 424B are to be provided with original signatures to the Department's contract liaison. The completed forms are maintained by the Department in the pertinent procurement and contract files.

Further explanation of several of the requirements certified through this form may be found in the text of related contract provisions and in the Department's policies pertaining to procurement and contractual terms. In addition, detailed explanations of federal requirements may be obtained through the Internet at sites for the federal departments and programs and for the Office for Management of the Budget (OMB) and the General Services Administration (GSA).

ASSURANCES

Cascade County Attorney

The **Contractor**, Cascade County Attorney, for the purpose of contracting with the Montana Department of Public Health & Human Services, by its signature on this document certifies to the Department its compliance, as may be applicable to it, with the following requirements.

The Contractor assures the Department:

GENERAL COMPLIANCE REQUIREMENTS

- A. That the Contractor does not engage in conflicts of interest in violation of any state or federal legal authorities, any price fixing or any other anticompetitive activities that violate the federal antitrust Sherman Act, 15 U.S.C. §§1 – 7, Anti-Kickback Act, 41 U.S.C. §§ 51-58, and other federal legal authorities. And that the Contractor does not act in violation of 18-4-141, MCA or other legal authorities by colluding with other contractors for the purpose of gaining unfair

advantages for it or other contractors or for the purpose of providing the services at a noncompetitive price or otherwise in a noncompetitive manner.

- B. That the Contractor does not act in violation of the federal False Claims Act at 31 U.S.C. §§ 3729-3733 (the "Lincoln Law") or of the Montana False Claims Act, at Title 17, chapter 8, part 4, MCA. And that the Contractor and its employees, agents and subcontractors act to comply with requirements of the federal False Claims Act by reporting any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor, or other person has submitted a false claim to the federal government.
- C. That the Contractor is solely responsible for and must meet all labor, tax, and other legal Authorities requirements pertaining to its employment and contracting activities, inclusive of insurance premiums, tax deductions, unemployment and other tax withholding, overtime wages and other employment obligations that may be legally required with respect to it.
- D. That the Contractor maintains necessary and appropriate workers compensation insurance coverage.
- E. That the Contractor is an independent contractor and possesses, unless by law not subject to or exempted from the requirement, a current independent contractor certification issued by the Montana Department of Labor and Industry in accordance with 39-71-417 through 39-71-419, MCA.
- F. That the Contractor's subcontractors and agents are in conformance with the requirements of Sections B, C, and D of this Certification.
- G. That the Contractor, any employee of the Contractor, or any subcontractor in the performance of the duties and responsibilities of the proposed contract: 1) are not currently suspended, debarred, or otherwise prohibited in accordance with 2 CFR Part 180, OMB Guidelines To Agencies On Government wide Debarment and Suspension (nonprocurement) from entering into a federally funded contract or participating in the performance of a federally funded contract; and 2) are not currently removed or suspended in accordance with 18-4-241, MCA from entering into contracts with the State Of Montana.
- H. That the Contractor is in compliance with those provisions of the privacy, security, electronic transmission, coding and other requirements of the federal Health Insurance Portability And Accountability Act of 1996 (HIPAA) and the federal Health Information Technology For Economic And Clinical Health (HITECH), a part of the American Recovery And Reinvestment Act Of 2009, and the implementing federal regulations for both acts that are applicable to contractual performance if the Contractor is either a Covered Entity or a Business Associate as defined for purposes of those acts.
- I. That, as required by legal authorities or contract, the Contractor maintains smoke and tobacco free public and work sites. And if the contract performance is related to the delivery of a human service, the Contractor does not perform any work involved in the production, processing, distribution, promotion, sale, or use of tobacco products or the promotion of tobacco companies; or 3) accept revenues from the tobacco industry or subsidiaries of the tobacco industry if the acceptance results in the appearance that tobacco use is desirable or acceptable or in the appearance that the Contractor endorses a tobacco product or the gifting tobacco related entity.

COMPLIANCE REQUIREMENTS FOR FEDERALLY FUNDED CONTRACTS

- J. That the Contractor, in conformance with the Pro-Children Act of 1994 (20 U.S.C. §6081 *et seq.*), prohibits smoking at any site of federally funded activities that serve youth under the age of 18. This federal prohibition is not applicable to a site where the only federal funding for services is through Medicaid monies or the federally funded activity at the site is inpatient drug or alcohol treatment.
- K. That the Contractor does not expend federal monies in violation of federal legal authorities prohibiting expenditure of federal funds on lobbying the United States Congress or state legislative bodies or for any effort to persuade the public to support or oppose legislation.
- L. That the Contractor maintains in compliance with the Drug-Free Workplace Act of 1988, 41 U.S.C. 701, *et seq.*, drug free environments at its work sites, providing required notices, undertaking affirmative reporting, and other requirements, as required by federal legal authorities.
- M. That the Contractor is not delinquent in the repayment of any debt owed to a federal entity.
- N. That the Contractor, if expending federal monies for research purposes, complies with federal legal authorities relating to use of human subjects, animal welfare, biosafety, misconduct in science and metric conversion.
- O. That the Contractor, if receiving aggregate payments of Medicaid monies totaling \$5,000,000 or more annually, has established in compliance with 1902(a)(68) of the Social Security Act, 42 U.S.C. 1396a(a)(68), written policies with educational information about the federal False Claims Act at 31 U.S.C. §§ 3729–3733 (the “Lincoln Law”) and presents that information to all employees.
- P. That the Contractor is in compliance with the executive compensation reporting requirement of the Federal Funding Accountability And Transparency Act (FFATA or Transparency Act), P.L. 109-282, as amended by Section 6202(a), P.L. 110-252-1, either in that the Contractor does not meet the criteria necessitating the submittal of a report by an entity or in that, if the Contractor meets the criteria mandating reporting, the Contractor produces the information in a publicly available report to the Securities And Exchange Commission (SEC) or to the Internal Revenue Service and provides the report in a timely manner to the Department or produces a separate report with the information and submits that report to the in a timely manner to the Department.
- Q. That the Contractor, if a contractor for the delivery of Medicaid funded services, is in compliance with the requirements of 42 C.F.R. §§ 455.104, 455.105, and 455.106 concerning disclosures of ownership and control, business transactions, and persons with criminal convictions.
- R. That the Contractor, if providing federally funded health care services, is not as an entity currently federally debarred from receiving reimbursement for the provision of federally funded health care services and furthermore does not currently have any employees or agents who are federally debarred from the receiving reimbursement for the provision of federally funded health care services.

COMPLIANCE REQUIREMENTS FOR FEDERALLY FUNDED CONTRACTS INVOLVING THE PURCHASE OR DEVELOPMENT OF PROPERTY

- S. That the Contractor manages any real, personal, or intangible property purchased or developed with federal monies in accordance with federal legal authorities.
- T. That the Contractor, if expending federal monies for construction purposes or otherwise for property development, complies with federal legal authorities relating to flood insurance, historic properties, relocation assistance for displaced persons, elimination of architectural barriers, metric conversion and environmental impacts.
- U. That the Contractor, if the contract exceeds \$100,000, complies with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act, Pub. L. 94-163, 42 U.S.C. §6321 et. seq.
- V. That the Contractor, if the contract exceeds \$100,000, complies with all applicable standards, orders and requirements issued under section 306 of the Clean Air Act, 42 U.S.C. 7607, section 508 of the Clean Water Act, 33 U.S.C. 1368, Executive Order 11738, and U.S. Environmental Protection Agency regulations, 40 C.F.R. Part15 and that if the Contractor enters into a subcontract that exceeds \$100,000 these requirements are in that contract.

CASCADE COUNTY ATTORNEY

BY: _____
Joshua Racki, Cascade County Attorney

Date: _____

CONTRACTOR

BY: _____
Cascade County Commissioner

Date: _____

BY: _____
Cascade County Commissioner

Date: _____

BY: _____
Cascade County Commissioner

Date: _____

SOURCES OF INFORMATION

DPHHS GS-302
Rev. 06/2018

SOURCES OF INFORMATION ON THE PRIVACY, TRANSACTIONS AND SECURITY REQUIREMENTS PERTAINING TO HEALTH CARE INFORMATION OF THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) AND THE FEDERAL HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT (HITECH), ENACTED AS PART OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

The following are sources of information concerning the applicability of and implementation of the privacy, transactions and security requirements of HIPAA and HITECH. The Department Of Public Health & Human Services requires that contractors generating, maintaining, and using health care information in relation to recipients of State administered and funded services be compliant with the requirements of HIPAA and HITECH as applicable under the federal legal authorities and the status of the Department as a health care plan.

There can be difficulty in interpreting the applicability of the HIPAA and HITECH requirements to an entity and various circumstances. It is advisable to retain knowledgeable experts to advise concerning determinations of applicability and appropriate compliance.

Websites specified here may be changed without notice by those parties maintaining them.

FEDERAL RESOURCES

The following are official federal resources in relation to HIPAA and HITECH requirements. These are public sites. Implementation of the additional requirements under HITECH, due to the more recent date of enactment, is occurring on an ongoing basis.

1. U.S. Department Of Health & Human Services / Office Of Civil Rights www.hhs.gov/ocr/hipaa

The federal Department of Health & Human Services / Office of Civil Rights (OCR) provides information pertaining to privacy and security requirements under HIPAA and HITECH including the adopted regulations and various official interpretative materials. This site includes an inquiry service. OCR is responsible for the implementation of the privacy and security aspects of HIPAA/HITECH and serves as both the official interpreter for and enforcer of the privacy requirements.

2. U.S. Department of Health & Human Services / Centers for Disease Control & Prevention <http://www.cdc.gov/Other/privacy.html>. The federal Department of Health & Human Services / Centers for Disease Control & Prevention (CDC) provides information pertaining to the application of privacy requirements under HIPAA to public health activities and programs.

STATE RESOURCES

The Department Website for Medicaid Provider Information provides general information for providers of services on compliance with various state and federal requirements. <https://medicaidprovider.mt.gov/>

Further information concerning HIPAA/HITECH compliance in the delivery of services funded through the Department's various programs can be reviewed at the Department Website for DPHHS HIPAA Policies. <https://dphhs.mt.gov/HIPAA>

Certain departmental programs may have more detailed guidance available in relation to particular programs of services. Inquiries may be directed at a program to determine if further information is available.

PROVIDER ASSOCIATIONS

Many national and state provider associations have developed extensive resources for their memberships concerning HIPAA/HITECH requirements. Those are important resources in making determinations as to the applicability and implementation of HIPAA/HITECH.

CONSULTANT RESOURCES

There are innumerable consulting resources available nationally. The Department does not make recommendations or referrals as to such resources. It is advisable to pursue references before retaining any consulting resource. Some consulting resources may be inappropriate for certain types of entities and circumstances.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions reducing this burden, to the Office of Management and Budget, Paperwork Reduction project (0348-0040), Washington, DC 20503. **PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurance. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include, but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683 and 1685-1686), which prohibit discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3) as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 2601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under

which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-66), which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333, regarding labor standards for federally assisted construction sub agreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approval State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955k, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling and treatment of warm-blooded animals held for research, teaching or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) Which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

CASCADE COUNTY ATTORNEY

BY: _____
Joshua Racki, Cascade County Attorney

Date: _____

CONTRACTOR

BY: _____
Cascade County Commissioner

Date: _____

CONTRACTOR

BY: _____
Cascade County Commissioner

Date: _____

CONTRACTOR

BY: _____
Cascade County Commissioner

Date: _____

DISCLOSURE OF LOBBYING ACTIVITIES

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Approved by OMF
0348-0046

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: Year _____ quarter _____ Date of last report _____
(See reverse for public burden disclosure)		
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known Congressional District, if known: _____	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____	
6. Federal Department/Agency: _____	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known: _____	9. Award Amount, if known: \$ _____	
10. a. Name and Address of Lobbying Registrant (If individual, last name, first name, MI): _____	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI): _____	
11. Information requested through this form is authorized by Title 31 U.S.C., Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether sub awarded or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to Title 31 U.S.C., Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the sub awardee, e.g., the first sub awardee of the prime is the 1st tier. Subawards include, but are not limited to, subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in Item 4 checks ☐ Sub awardee ☐, then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award of loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in Item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number, the contract, grant or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., ☐ RFP-DE-90-001".
9. For a covered Federal action, where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in Item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services and include full address if different from 10(a). Enter Last Name, First Name and Middle Initial (MI).11. The certifying official shall sign and date the form, print his/her name, title and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

FFATA COMMON DATA ELEMENTS AND COMPENSATION REPORT

DPHHS-FB-180
Rev. 4/2019

State of Montana
Department of Public Health and Human Services
Business and Financial Services Division

Federal Funding Accountability and Transparency Act
FFATA Summary: FFATA Common Data Elements Report
Section 1: Sub-Award Information Required for Reporting

This report must be completed upon contract obligation of >\$25,000.

MT Item	MT Data Element	Insert Data	Description
FFATA-1-01	Subrecipient DUNS Number	Insert Subrecipient DUNS Number	Provide subrecipient organization's 9-digit Data Universal Numbering System (DUNS) number or Central Contractor Registration plus 4 extended DUNS number.
FFATA-1-02	DPHHS Contract Number	Insert DPHHS Contract Number	Provide contract/grant/award number (if any) assigned to the subrecipient award by recipient.
FFATA-1-02-A	Grant Award Name	Insert Grant Award Name	Provide grant/award name assigned by the federal government (i.e. Child Abuse; VR-Independent Living; Immunization; Primary Care; Substance Abuse, etc.).
FFATA-1-03	Subrecipient Name	Insert Subrecipient Name	Provide legal name of subrecipient as registered in the Central Contractor Registration (www.ccr.gov).
FFATA-1-04-A	Address Line 1	Insert Address	Physical location as listed in Central Contractor Registration.
FFATA-1-04-B	Address Line 2	Insert Address	
FFATA-1-04-C	City	Insert City	
FFATA-1-04-D	State	Insert State	
FFATA-1-04-E	Zip+4	Insert Zip	

FFATA-1-04-F	Congressional District	Insert Congressional District	AL or 01 for District if MT.
FFATA-1-05	CFDA (Catalog of Federal Domestic Assistance) Number	Insert CFDA Number	If not known, DPHHS will complete.
FFATA-1-06	Total Contract	Insert Contract Value	Provide total amount obligated to sub awardee or subcontractor for contract period indicated.
FFATA-1-07	Contract Period	Insert Contract Period	Indicate project/grant period established in subaward document during which sponsorship begins and ends. For multi-year awards for a project/grant period (e.g., 5 years) funded in increments known as budget periods or funding periods, provide total project/grant period, not individual budget period or funding period.
FFATA-1-08-A	Primary Performance City	Insert Performance City	Provide City of primary performance.
FFATA-1-08-B	Primary Performance County	Insert Performance County	Provide County of primary performance.
FFATA-1-08-C	Primary Performance State	Insert Performance State	Provide State of primary performance.
FFATA-1-08-D	Primary Performance Zip+4	Insert Performance Zip	Provide Zip of primary performance.
FFATA-1-08-E	Congressional District	Insert Congressional District	Provide Congressional District of primary performance.
FFATA-1-09	Funding Agency	Insert Funding Agency	If not known, DPHHS will complete.
FFATA-1-10	Brief Description of Purpose of Funding Action	Insert Purpose	

DPHHS-FB-181
Rev. 4/2019

State of Montana
Department of Public Health and Human Services
Business and Financial Services Division

**Federal Funding Accountability and Transparency Act
FFATA Summary: FFATA Common Data Elements Report**

Section 2: Officers/Executive Compensation Report

This section must be completed upon contract obligation of >\$25,000 and yearly thereafter.

CONTRACT TITLE: Insert Contract Title

DPHHS CONTRACT #: Insert DPHHS Contract Number

DUNS #: Insert DUNS #

SUBMITTED BY: Insert Name and Title

INSERT DATE: Insert Submission Date

Is Subrecipient (Contractor) Exempt? Insert Yes or No

	Name	Total Compensation	Title
1.	Insert Name	Insert Amount	Insert Title
2.	Insert Name	Insert Amount	Insert Title
3.	Insert Name	Insert Amount	Insert Title
4.	Insert Name	Insert Amount	Insert Title
5.	Insert Name	Insert Amount	Insert Title

RETURN FFATA FORMS TO:
DPHHS
ATTN: BFSD-FFATA REPORTING
PO Box 4210
Helena, MT 59604-4210
or
e-Mail: hhsffata@mt.gov

DARK MONEY DISCLOSURE DECLARATION

**Declaration Form
Dark Money Spending Disclosure Requirements**

Contracting Entity shall comply with the State of Montana Executive Order No. 15-2018 requiring the disclosure of dark money spending.

Definitions. As used in this declaration form, the following definitions apply:

Electioneering Communication: A paid communication that is publicly distributed by radio, television, cable, satellite, internet website, mobile device, newspaper, periodical, billboard, mail, or any other distribution of printed or electronic materials, that is made within 60 days of the initiation of voting in an election in Montana, that can be received by more than 100 recipients in the district in Montana voting on the candidate or ballot issue, and that:

- a. refers to one or more clearly identified candidates in that election in Montana;
- b. depicts the name, image, likeness, or voice of one or more clearly identified candidates in that election in Montana; or
- c. refers to a political party, ballot issue, or other question submitted to the voters in that election in Montana.

The term does not mean:

- a. a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation unless the facilities are owned or controlled by a candidate or political committee;
- b. a communication by any membership organization or corporation to its members, stockholders, or employees;
- c. a commercial communication that depicts a candidate's name, image, likeness, or voice only in the candidate's capacity as owner, operator, or employee of a business that existed prior to the candidacy; or
- d. a communication that constitutes a candidate debate or forum or that solely promotes a candidate debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

In this definition, the phrase "made within 60 days of the initiation of voting in an election" means:

- a. in the case of mail ballot elections, the initiation of voting occurs when official ballot packets are mailed to qualified electors pursuant to 13-19-206, MCA; or
- b. in other elections the initiation of voting occurs when absentee ballot packets are mailed to or otherwise delivered to qualified electors pursuant to 13-13-214, MCA.

Contracting Entity: A bidder, offeror, or contractor.

Covered Expenditure means:

- a. A contribution, expenditure, or transfer made by the Contracting Entity, any of its parent entities, or any affiliates or subsidiaries within the entity's control, that:
 - i. is to or on behalf of a candidate for office, a political party, or a party committee in Montana; or
 - ii. is to another entity, regardless of the entity's tax status, that pays for an Electioneering Communication, or that makes contributions, transfers, or expenditures to another entity, regardless of its tax status, that pays for Electioneering Communication; and
- b. The term excludes an expenditure made by the Contracting Entity, any of its parent entities, or any affiliates or subsidiaries within the entity's control made in the ordinary course of business conducted by the entity making the expenditure; investments; or expenditures or contributions where the entity making the expenditure or contribution and the recipient agree that it will not be used to contribute to candidates, parties, or Electioneering Communication.

Solicitation Requirements. The Contracting Entity shall disclose Covered Expenditures that the Contracting Entity has made within two years prior to submission of its bid or offer.

The disclosure of Covered Expenditures is only required by the bidder/offeror whenever the aggregate amount of Covered Expenditures made within a 24-month period by the bidder/offeror, any parent entities, or any affiliates or subsidiaries within the bidder/offeror's control exceeds \$2,500.

If the bidder/offeror meets the disclosure requirements, the bidder/offeror shall submit this signed declaration form indicating "Yes" AND the required disclosure form with its bid/proposal.

If the bidder/offeror does NOT meet the disclosure requirements, the bidder/offeror shall submit this signed declaration form with its bid/proposal indicating "No".

Annual Contract Requirements. The Contracting Entity agrees that if awarded a contract and the contract term exceeds, or has the potential to exceed 24 months, it must annually review and complete a new declaration form and disclosure form, if necessary.

☐ No - I do NOT meet the disclosure requirements. I certify that I have read, understand these requirements and the Contracting Entity has not made Covered Expenditures in excess of \$2,500 in the 24 months immediately preceding the submission of this form.

Company Name

Authorized Signature

Date

20213PARA0001

Contract or Solicitation Number

☐ Yes - I meet the disclosure requirements for the 24 months immediately preceding the submission of this form. I have read, understand the requirements and I will complete the necessary disclosure form and submit it with this form.

Disclosure Template: <https://spb.mt.gov/Laws-Rules>

Company Name

Authorized Signature

Date

20213PARA0001

Contract or Solicitation Number

December 22, 2020

Contract 20-207

Agenda Action Report
Prepared for the
Cascade County Commission

ITEM: ICE WSO Program MOA

INITIATED AND PRESENTED BY: Sheriff Slaughter
Cascade County Sheriff's Office

ACTION REQUESTED: Approval of Contract 20-207

BACKGROUND:

This Memorandum of Agreement (MOA) is entered into by Cascade County Sheriff's Office and the U.S. Immigration and Customs Enforcement (ICE). The CCSO will participate in the Warrant Service Officer Program (WSO). As part of this program, the CCSO will select specific Detention Officers, approved by ICE, to perform certain limited functions of an immigration officer within the Cascade County Detention Center.

TERM: Upon Signature and will remain in effect until either party provides 90 day written notice

AMOUNT: \$0

RECOMMENDATION: Approval of Contract 20-207.

TWO MOTIONS PROVIDED FOR CONSIDERATION:

MOTION TO APPROVE:

Mr. Chairman, I move that the Commission **APPROVE** Contract 20-207, ICE WSO Program MOA between Cascade County Sheriff's Office and the US Immigration and Customs Enforcement.

MOTION TO DISAPPROVE:

Mr. Chairman, I move that the Commission **DISAPPROVE** Contract 20-207, ICE WSO Program MOA between Cascade County Sheriff's Office and the US Immigration and Customs Enforcement.



CONTRACT

20-207

CASCADE COUNTY SHERIFF'S OFFICE

Jesse Slaughter – Sheriff | Cory Reeves – Undersheriff

3800 Ulm North Frontage Road, Great Falls, Montana 59404 406.454.6820 cascadedcountymt.gov

Hon. Enrique M. Lucero
ICE/ERO Executive Associate Director
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
500 12th Street S.W.
Washington, DC 20536

SUBJECT: Warrant Service Officer Program Partnership Request

Director Lucero:

I am writing to request the participation of the Cascade County Sheriff's Office in the Warrant Service Officer Program (WSO) pursuant to § 287(g) of the Immigration and Naturalization Act. Given our current relationship with ICE, participation in this program will enable us to better serve and meet the needs of our community in partnership with your agency.

I have been in contact with your Salt Lake City ERO Field Office Director and I am proposing the following:

1. The establishment of a Warrant Service Officer Program for the Cascade County Detention Center, located in Cascade County, Montana.
2. The Cascade County Detention Center is the only jail in Cascade County, Montana.
3. Conduct training for CCSO Detention Officers assigned to the Detention Center as Warrant Service Officers. I understand the requirements, as enumerated in the Memorandum of Understanding and guidance provided by and from ICE, for the selection of these officers.

The WSO Program will allow us to enter into a Memorandum of Agreement between our agencies, which will enable my office to assist in expediting the transfer of subjects to ICE custody who may pose a risk to public safety in Cascade County. I respectfully ask for your endorsement of our request to participate in the WSO Program, and look forward to a partnership that will benefit both agencies.

If you have any further questions, please do not hesitate to contact my office.

Sincerely,

Jesse Slaughter, Sheriff

MEMORANDUM OF AGREEMENT

Warrant Service Officer Program

I. PARTIES

This Memorandum of Agreement (MOA) constitutes an agreement between U.S. Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security (DHS), and the Cascade County Sheriff's Office, hereinafter the law enforcement agency (LEA), pursuant to which ICE delegates to nominated, trained, certified, and authorized LEA personnel the authority to perform certain immigration enforcement functions as specified herein. The LEA and ICE enter into this MOA in good faith and agree to abide by the terms and conditions contained herein.

II. PURPOSE

The purpose of this collaboration is to promote public safety by facilitating the custodial transfer of specific aliens in LEA jail/correctional facilities to ICE for removal purposes at the time of the alien's scheduled release from criminal custody. This MOA sets forth the terms and conditions pursuant to which selected LEA personnel (participating LEA personnel) will be nominated, trained, and approved by ICE to perform certain limited functions of an immigration officer within the LEA's jail/correctional facilities. Nothing contained herein shall otherwise limit the jurisdiction and powers normally possessed by participating LEA personnel as members of the LEA. However, the exercise of the immigration enforcement authority delegated under this MOA to participating LEA personnel shall occur only as provided in this MOA.

III. AUTHORITY

Section 287(g) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1357(g) (1996), as amended by the Homeland Security Act of 2002, Pub. L. No. 107-296, authorizes the Secretary of DHS to enter into written agreements with a State or any political subdivision of a State so that qualified personnel can perform certain functions of an immigration officer. Such authority has been delegated by the Secretary to ICE, and this MOA constitutes such a written agreement.

IV. RESPONSIBILITIES

The LEA is expected to pursue to completion all criminal charges that caused the alien to be taken into custody and over which it has jurisdiction. ICE will assume custody of an alien only after said individual has been released from LEA custody.

A. DESIGNATION OF AUTHORIZED FUNCTIONS

Approved participating LEA personnel will be authorized to perform only those immigration officer functions set forth in the Standard Operating Procedures (SOP) in Appendix A.

B. NOMINATION OF PERSONNEL

The LEA will use due diligence to screen and nominate candidates for ICE training and approval under this MOA. All candidates must be United States citizens, have knowledge of and have enforced laws and regulations pertinent to their law enforcement activities and their jurisdictions, and have been trained on maintaining the security of LEA facilities, and have enforced rules and regulations governing inmate accountability and conduct.

ICE reserves the right to conduct an independent background check for each candidate. This background check requires all candidates to complete a background questionnaire. The questionnaire requires, but is not limited to, the submission of fingerprints, a personal history

questionnaire, and the candidate's disciplinary history (including allegations of excessive force or discriminatory action). ICE reserves the right to query any and all national and international law enforcement databases to evaluate a candidate's suitability to participate in the enforcement of immigration authorities under this MOA. Upon request by ICE, the LEA will provide continuous access to disciplinary records of all candidates along with a written authorization by the candidate allowing ICE to have access to his or her disciplinary records.

Any expansion in the number of participating LEA personnel or scheduling of additional training classes is subject to all the requirements of this MOA and the accompanying SOP.

C. TRAINING OF PERSONNEL

Before participating LEA personnel receive authorization to perform immigration officer functions under this MOA, they must successfully complete initial training provided by ICE on relevant administrative, legal, and operational issues tailored to the immigration enforcement functions to be performed.

Each LEA nominee must pass a final examination with a minimum score of 70 percent to receive certification. If an LEA nominee fails to attain a 70-percent rating on the examination, he or she will have one opportunity to review the testing material and re-take a similar examination. Failure to achieve a 70-percent rating upon retaking the final examination will result in the disqualification of the LEA nominee and discharge of the nominee from training.

ICE will review the training requirements annually, reserves the right to amend them, and may require additional training as needed.

D. CERTIFICATION AND AUTHORIZATION

Upon successful completion of initial training, LEA personnel shall be deemed "certified" under this MOA.

ICE will certify in writing the names of those LEA personnel who successfully complete training and pass all required test(s). Upon receipt of the certification, the ICE Field Office Director (FOD) will provide the participating LEA personnel a signed authorization letter allowing the named LEA personnel to perform specified functions of an immigration officer. ICE will also provide a copy of the authorization letter to the LEA. ICE will also execute ICE Form 70-006, Designated Immigration Officer. Only those certified LEA personnel who receive authorization letters and ICE Form 70-006 issued by ICE and whose immigration enforcement efforts are overseen by ICE may conduct immigration officer functions described in this MOA.

Along with the authorization letter and ICE Form 70-006, ICE will issue the certified LEA personnel official immigration officer credentials. Participating LEA personnel shall carry their ICE-issued credentials while performing immigration officer functions under this MOA. Such credentials provided by ICE shall remain the property of ICE and shall be returned to ICE upon termination of this agreement, when a participating LEA employee ceases his/her participation, or when deemed necessary by the FOD.

Authorization of participating LEA personnel to act pursuant to this MOA may be withdrawn at any time and for any reason by ICE and must be memorialized in a written notice of withdrawal identifying an effective date of withdrawal and the personnel to whom the withdrawal pertains. Such withdrawal may be effectuated immediately upon notice to the LEA. The LEA and the FOD will be responsible for notification of the appropriate personnel in their respective agencies. The termination of this MOA shall constitute immediate revocation of all immigration enforcement authorizations delegated hereunder.

The LEA will make every attempt, where practicable, to provide ICE with a 90 day notice if participating LEA personnel cease their participation in the program, so that appropriate action can be taken in accordance with ICE policies, including inventorying and retrieval of credentials, and training replacement personnel as needed.

E. COSTS AND EXPENDITURES

The LEA is responsible for personnel expenses, including, but not limited to, salaries and benefits, local transportation, and official issue material. ICE will provide instructors and training materials. The LEA is responsible for the salaries and benefits, including any overtime, of all of its personnel being trained or performing duties under this MOA and of those personnel performing the regular functions of the participating LEA personnel while they are receiving training. The LEA will cover the costs of all LEA personnel's travel, housing, and per diem affiliated with the training required for participation in this MOA. ICE is responsible for the salaries and benefits of all of its personnel, including instructors and supervisors.

If ICE determines the training provides a direct service for the Government and it is in the best interest of the Government, the Government may issue travel orders to selected personnel and reimburse travel, housing, and per diem expenses only. The LEA remains responsible for paying salaries and benefits of the selected personnel.

The LEA is responsible for providing all administrative supplies (e.g. printer toner) necessary for normal office operations. The LEA is also responsible for providing the necessary security equipment, such as handcuffs, leg restraints, etc.

F. ICE SUPERVISION

Immigration enforcement activities conducted by participating LEA personnel will be supervised and directed by ICE. Participating LEA personnel are not authorized to perform immigration officer functions except when working under the supervision or direction of ICE. Additional supervisory and administrative responsibilities are specified in Appendix A.

The actions of participating LEA personnel will be reviewed by ICE officers on an ongoing basis to ensure compliance with the requirements of the immigration laws and procedures and to assess the need for individual training or guidance.

For purposes of this MOA, ICE officers will provide supervision of participating LEA personnel only to immigration enforcement functions as authorized in this MOA. The LEA retains supervision of all other aspects of the employment of and performance of duties by participating LEA personnel.

In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating LEA personnel in exercising these delegated authorities under this MOA shall be DHS and ICE policies and procedures. ICE is responsible for providing the LEA with the applicable DHS and ICE policies. However, when engaged in immigration enforcement activities, no participating LEA personnel will be expected or required to violate or otherwise fail to maintain the LEA's rules, standards, or policies, or be required to fail to abide by restrictions or limitations as may otherwise be imposed by law.

If a conflict arises between an order or direction of an ICE officer or a DHS or ICE policy and the LEA's rules, standards, or policies, the conflict shall be promptly reported to the points of contact in Section VII. who shall attempt to resolve the conflict.

G. INTERPRETATION SERVICES

Participating LEA personnel will provide an opportunity for aliens with limited English language proficiency to request an interpreter. Qualified foreign language interpreters will be provided by the LEA, as needed.

The LEA will maintain a list of qualified interpreters or companies it contracts with to provide such interpreters. A qualified interpreter, which may include LEA personnel, means an interpreter who can interpret effectively, accurately, and impartially, using any specialized vocabulary. If an interpreter is used when a designated officer is performing functions under this MOA, the interpreter must be identified, by name, in records by annotating on the Warrant for Arrest of Alien or the Warrant of Removal/Deportation.

H. LIABILITY AND RESPONSIBILITY

Except as otherwise noted in this MOA or allowed by Federal law, and to the extent required by 8 U.S.C. § 1357(g)(7) and (8), the LEA will be responsible and bear the costs of participating LEA personnel with regard to their property or personal expenses incurred by reason of death, injury, or incidents giving rise to liability.

Participating LEA personnel will be treated as Federal employees only for purposes of the Federal Tort Claims Act, 28 U.S.C. § 1346(b)(1), 2671-2680, and worker's compensation claims, 5 U.S.C. § 8101 et seq., when performing a function on behalf of ICE as authorized by this MOA. *See* 8 U.S.C. § 1357(g)(7); 28 U.S.C. § 2671. In addition, it is the understanding of the parties to this MOA that participating LEA personnel will enjoy the same defenses and immunities from personal liability for their in-scope acts that are available to ICE officers based on actions conducted in compliance with this MOA. *See* 8 U.S.C. § 1357(g)(8).

Participating LEA personnel named as personal-capacity defendants in litigation arising from activities carried out under this MOA may request representation by the U.S. Department of Justice. *See* 28 C.F.R. § 50.15. Absent exceptional circumstances, such requests must be made in writing. LEA personnel who wish to submit a request for representation shall notify the local ICE Office of the Chief Counsel at 2975 South Decker Lake Drive, West Valley, UT 84119. The Office of the Chief Counsel in turn will notify the ICE Headquarters Office of the Principal Legal Advisor (OPLA), which will assist LEA personnel with the request for representation, including the appropriate forms and instructions. Unless OPLA concludes that representation clearly is unwarranted, it will forward the request for representation, any supporting documentation, and an advisory statement opining whether: 1) the requesting individual was acting within the scope of his/her authority under 8 U.S.C. § 1357(g); and, 2) such representation would be in the interest of the United States, to the Director of the Constitutional and Specialized Tort Litigation Section, Civil Division, Department of Justice (DOJ). Representation is granted at the discretion of DOJ; it is not an entitlement. *See* 28 C.F.R. § 50.15.

The LEA agrees to cooperate with any Federal investigation related to this MOA to the full extent of its available powers, including providing access to appropriate databases, personnel, individuals in custody and documents. Failure to do so may result in the termination of this MOA. Failure of any participating LEA employee to cooperate in any Federal investigation related to this MOA may result in revocation of such individual's authority provided under this MOA. The LEA agrees to cooperate with Federal personnel conducting reviews to ensure compliance with the terms of this MOA and to provide access to appropriate databases, personnel, and documents necessary to complete such compliance review. It is understood that information provided by any LEA personnel under threat of disciplinary action in an administrative investigation cannot be used against that individual in subsequent criminal proceedings, consistent with *Garrity v. New Jersey*, 385 U.S. 493 (1967), and its progeny.

As the activities of participating LEA personnel under this MOA are undertaken under Federal authority, the participating LEA personnel will comply with Federal standards and guidelines relating to the Supreme Court's decision in *Giglio v. United States*, 405 U.S. 150 (1972), and its progeny, which govern the disclosure of potential impeachment information about possible witnesses or affiants in a criminal case or investigation.

The LEA and ICE are each responsible for compliance with the Privacy Act of 1974, 5 U.S.C. §552a, DHS Privacy Act regulations, 6 C.F.R. §§ 5.20-5.36, as applicable, and related system of records notices with regard to data collection and use of information under this MOA.

I. CIVIL RIGHTS STANDARDS

Participating LEA personnel are bound by all Federal civil rights laws, regulations, and guidance relating to non-discrimination, including the U.S. Department of Justice "Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity," dated December 2014, Executive Order 13,166, "Improving Access to Services for Persons with Limited English Proficiency," (Aug. 2000), Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000 et seq., which prohibits discrimination based upon race, color, or national origin (including limited English proficiency) in any program or activity receiving Federal financial assistance, Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination based on disability and requires the LEA to provide effective communication to individuals with disabilities, and Title II of the Americans with Disabilities Act of 1990, which also prohibits discrimination based on disability and requires the LEA to provide effective communication to individuals with disabilities.

V. REPORTING AND DOCUMENTATION

A. COMPLAINT PROCEDURES

The complaint reporting procedure for allegations of misconduct by participating LEA personnel, including activities undertaken under the authority of this MOA, is included in Appendix B.

B. COMMUNICATION

The FOD, or the FODs management representative and the LEA shall make every effort to meet at least annually to ensure compliance with the terms of this MOA. When necessary, ICE and the LEA may limit the participation of these meetings in regard to non-law enforcement personnel. The attendees will meet at locations to be agreed upon by the parties, or via teleconference. An initial review meeting between ICE and the LEA should be held within approximately 12 months of the MOAs operational date.

C. COMMUNITY OUTREACH

The LEA in coordination with the local ICE Field Office will engage, as necessary, in Steering Committee meetings to enhance support for the 287(g) mission, and to ensure compliance with the terms of this MOA.

D. RELEASE OF INFORMATION TO THIRD PARTIES

The LEA may, at its discretion, communicate the substance of this agreement to organizations and groups expressing an interest in the law enforcement activities to be engaged in under this MOA. It is the practice of ICE to provide a copy of this MOA, only after it has been signed, to requesting media outlets; the LEA is authorized to do the same.

The LEA hereby agrees to coordinate with ICE prior to releasing any information relating to, or exchanged under, this MOA. For releases of information to the media, the LEA must coordinate in advance of release with the ICE Office of Public Affairs, which will consult the ICE Privacy Office for approval prior to any release. The points of contact for ICE and the LEA for this purpose are identified in Appendix C. For releases of information to all other parties, the LEA must coordinate in advance of release with the FOD or the FOD's representative.

Information obtained or developed as a result of this MOA, including any documents created by the LEA that contain information developed or obtained as a result of this MOA, is under the control of ICE and shall not be disclosed unless: 1) permitted by applicable laws, regulations, or executive orders; and 2) the LEA has coordinated in advance of release with (a) the ICE Office of Public Affairs, which will consult the ICE Privacy Office for approval, prior to any release to the media, or (b) an ICE officer prior to releases to all other parties. LEA questions regarding the applicability of this section to requests for the release of information shall be directed to an ICE officer.

Nothing herein limits LEA's compliance with state public records laws regarding those records that are solely state records and not ICE records.

VI. MODIFICATIONS TO THIS MOA

Modifications to this MOA must be proposed in writing and approved and signed by both parties. Modification to Appendix A shall be done in accordance with the procedures outlined in the SOP.

VII. POINTS OF CONTACT

ICE and the LEA points of contact (POCs) for purposes of this MOA are:

For the LEA: Cascade County Sheriff

For DHS: Salt Lake City Field Office Director

VIII. EFFECTIVE DATE AND TERMINATION OF THIS MOA

This MOA becomes effective upon signature of both parties and will remain in effect until either party, upon 90-day written notice to the other party, provides notice of termination or suspension of the MOA. A termination or suspension notice by ICE shall be delivered personally or by certified or registered mail to the LEA and termination or suspension shall take effect 90-days after receipt of such notice, unless exigent circumstances involving public safety dictate otherwise. Notice of termination or suspension by the LEA shall be given to the FOD and termination or suspension shall take effect 90-days after receipt of such notice, unless exigent circumstances involving public safety dictate otherwise.

This MOA does not, is not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.

By signing this MOA, each party represents it is fully authorized to enter into this MOA, accepts the terms, responsibilities, obligations, and limitations of this MOA, and agrees to be bound thereto to the fullest extent allowed by law.

Date: _____

Date: _____

Enrique M. Lucero
Executive Associate Director
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
Department of Homeland Security

Jesse Slaughter
Sheriff
Cascade County Sheriff's Office

**BOARD OF COUNTY COMMISSIONERS
CASCADE COUNTY, MONTANA**

James L. Larson, Chairman

Jane Weber, Commissioner

Joe Briggs, Commissioner

Passed and adopted at Commission Meeting held on this 22nd day of December 2020.

Attest

On this 22nd day of December 2020, I hereby attest the above-written signatures of James L. Larson, Jane Weber and Joe Briggs, Cascade County Commissioners.

RINA FONTANA MOORE, CASCADE COUNTY CLERK AND RECORDER

*** APPROVED AS TO FORM:
Josh Racki, County Attorney**

DEPUTY COUNTY ATTORNEY

*** THE COUNTY ATTORNEY HAS PROVIDED ADVICE AND APPROVAL OF THE FOREGOING DOCUMENT LANGUAGE ON BEHALF OF THE BOARD OF CASCADE COUNTY COMMISSIONERS, AND NOT ON BEHALF OF OTHER PARTIES OR ENTITIES. REVIEW AND APPROVAL OF THIS DOCUMENT BY THE COUNTY ATTORNEY WAS CONDUCTED SOLELY FROM A LEGAL PERSPECTIVE AND FOR THE EXCLUSIVE BENEFIT OF CASCADE COUNTY. OTHER PARTIES SHOULD NOT RELY ON THIS APPROVAL AND SHOULD SEEK REVIEW AND APPROVAL BY THEIR OWN RESPECTIVE COUNSEL.**

APPENDIX A

STANDARD OPERATING PROCEDURES (SOP)

The purpose of this appendix is to establish standard, uniform procedures for the implementation and oversight of the program within the FOD area of responsibility. This appendix can be modified only in writing and by mutual acceptance of ICE and the LEA.

Pursuant to this MOA, the LEA has been delegated authorities as outlined below. This MOA is designed to facilitate the custodial transfer of designated aliens in LEA's jail/correctional facilities to ICE within 48 hours of alien's release from criminal custody.

Authorized Functions:

Participating LEA personnel are only delegated the two authorities listed below:

- The power and authority to serve and execute warrants of arrest for immigration violations, 8 U.S.C. § 1357(a) and 8 C.F.R. § 287.5(e)(3), on designated aliens in LEA jail/correctional facilities at the time of the alien's scheduled release from criminal custody in order to transfer custody of the alien to ICE; and
- The power and authority to serve warrants of removal, 8 U.S.C. § 1357(a) and 8 C.F.R. §§ 241.2(b)(2), 287.5(e)(3), on designated aliens in LEA jail/correctional facilities at the time of the alien's scheduled release from criminal custody that executes the custodial transfer of the alien to ICE for removal purposes.

Upon transfer of the alien's custody to ICE, the alien will continue to be held in the LEA's jail/correctional facilities for no more than 48 hours unless there exists an agreement pursuant to which the LEA will continue to detain, for a reimbursable fee, aliens for immigration purposes. In the absence of an agreement, if the alien is not transferred to an ICE field office or an immigration detention facility within 48 hours, the alien shall be released from the LEA jail/correctional facility.

Additional Supervisory and Administrative Responsibilities:

The above immigration enforcement functions conducted by the participating LEA personnel will be supervised and directed by ICE. Participating LEA personnel are not authorized to perform immigration officer functions except when working under the supervision or direction of ICE. Additional supervisory and administrative responsibilities for each entity include, but are not limited to:

- The LEA shall provide notification to the ICE officer immediately after participating LEA personnel serve any warrant of arrest or warrant of removal that executes the custodial transfer of the alien to ICE for removal purposes, in a manner mutually agreed upon by the LEA and the FOD.
- Participating LEA personnel must report all encounters with asserted or suspected claims of U.S. citizenship to ICE immediately, but generally within one hour of the claim.

APPENDIX B

COMPLAINT PROCEDURE

The training, supervision, and performance of participating LEA personnel pursuant to the MOA, as well as the protections for U.S. citizens' and aliens' civil and constitutional rights, are to be monitored. Part of that monitoring will be accomplished through the complaint reporting and resolution procedures, which the parties to the MOA have agreed to follow.

If any participating LEA personnel are the subject of a complaint or allegation involving the violation of the terms of this MOA or a complaint or allegation of any sort that may result in that individual receiving professional discipline or becoming the subject of a criminal investigation or civil lawsuit, the LEA shall, to the extent allowed by State law, make timely notification to an ICE officer within 48 hours, excluding weekends, of the existence and nature of the complaint or allegation. The results of any internal investigation or inquiry connected to the complaint or allegation and the resolution of the complaint shall also be reported to an ICE officer, as established by ICE. It is the responsibility of the ICE officer to ensure notification is made to the ICE Office of Professional Responsibility (OPR) via the Joint Intake Center (JIC) at JointIntake@cbp.dhs.gov.

The LEA will also handle complaints filed against LEA personnel who are not designated and certified pursuant to this MOA but are acting in immigration functions in violation of this MOA. Any such complaints regarding non-designated LEA personnel acting in immigration functions must be forwarded to the ICE officer within 48 hours of the LEA receiving notice of the complaint. It is the responsibility of the ICE officer to ensure notification is made to JIC.

287(g) Complaint Process posters will be displayed in the processing areas of the LEA to ensure aliens encountered under the 287(g) Program are aware of the complaint process. Posters will be displayed in English and Spanish. If the alien understands a language other than English or Spanish or is unable to read, LEA personnel will read and/or translate the complaint process in a language the alien understands.

APPENDIX C

PUBLIC INFORMATION POINTS OF CONTACT

Pursuant to Section V(D) of this MOA, the signatories agree to coordinate appropriate release of information to the media, provided the release has been previously approved by both the ICE Privacy Officer and Public Affairs Officer, regarding actions taken under this MOA before any information is released. The points of contact for coordinating such activities are:

For the LEA:

Jesse Slaughter
Cascade County Sheriff
3800 Ulm North Frontage Road
Great Falls, MT 59404
Office: 406-454-6820
Fax: 406-454-6978

For ICE:

Public Affairs Office
Office of Public Affairs and Internal Communication
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
Washington, DC 20536
202-732-4242

December 22, 2020

Contract #20-208

Agenda Action Report
Prepared for the
Cascade County Commission

ITEM: MT-CDBG-13HR-01D contract amendment
extending end date to 3/31/2022 and accepting
revised Implementation Schedule

INITIATED AND PRESENTED BY: Mary K. Embleton,
Budget Officer/Grants Coordinator

ACTION REQUESTED: Approval of Contract 20-208

BACKGROUND:

Cascade County entered into a contract with the Montana Department of Commerce to accept a CDBG Housing Rehabilitation grant to assist the South Winds Water and Sewer District with funding in the amount of \$450,000 for the construction of wastewater treatment facilities at Trailer Terrace Mobile Home Park in Cascade County. The original contract was executed on February 22, 2016 for the period of July 12, 2013 through July 12, 2017 via contract #16-29 and was extended previously via contract #17-79 to end on December 31, 2018. The contract was again extended to December 31, 2019 via contract #18-211 and extended again to complete construction activity by December 31, 2020 and complete the Close-out activity by March 31, 2021. The Phase II Wastewater Project was delayed again due to winter shut-down for weather and delivery of lift station pumps held up by COVID issues. Construction activity needs to be completed by December 31, 2021 and the Close-out activity needs to be completed by March 31, 2022.

RECOMMENDATION: Approval of Contract #20-208.

TWO MOTIONS PROVIDED FOR CONSIDERATION:

MOTION TO APPROVE:

Mr. Chair, I move that the Commission approve Contract 20-208 to approve CDBG contract MT-CDBG-13HR-01D to March 31, 2022 and accept the revised implementation schedule for Phase II Wastewater Project for South Winds Water and Sewer District.

MOTION TO DISAPPROVE:

Mr. Chair, I move that the Commission disapprove Contract 20-208 to approve CDBG contract MT-CDBG-13HR-01d to March 31, 2022 and accept the revised implementation schedule for Phase II Wastewater Project for South Winds Water and Sewer District.

CONTRACT

20-208

**MONTANA DEPARTMENT OF COMMERCE
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
CONTRACT AMENDMENT #MT-CDBG-13HR-01D**

This Contract Amendment is entered into by and between Cascade County, (the Grantee), and the Montana Department of Commerce (the Department), and located at 301 South Park, Helena, Montana.

The Grantee and the Department mutually agree to amend Contract # MT-CDBG-13HR-01 executed on June 22, 2016, as amended MT-CDBG-13HR-01A executed on June 15, 2017, as amended MT-CDBG-13HR-01B executed on January 3, 2019, and as amended MT-CDBG-13HR-01C on December 11, 2019 as follows:

- I. Section 5, EFFECTIVE DATE AND TIME OF PERFORMANCE is amended to read as follows:

Section 5. EFFECTIVE DATE AND TIME OF PERFORMANCE

- (a) This Contract shall take effect upon execution by the parties and will terminate on March 31, 2022 or upon approval of Grantee's Project completion report by the Department, whichever is later, unless otherwise terminated in accordance with this Contract.
- (b) All authorized expenses to be reimbursed must be incurred by the Grantee between July 12, 2013 and December 31, 2021. All requests for reimbursement must be submitted to the Department within ninety (90) days after December 31, 2021.
- (c) The activities to be performed by the Grantee will be completed according to the implementation schedule set forth in Exhibit A. The Grantee may modify the implementation schedule set forth in Exhibit A only with prior written approval of the Department.
- (d) The Department may grant an extension to this Contract upon request by the Grantee if the Department determines, in its sole discretion, that the Grantee has demonstrated progress toward completion of the Project, has engaged in a good faith effort to comply with the duties, terms, and conditions of this Contract, and that the failure to comply with any of those services, duties, terms, or conditions resulted from circumstances beyond the Grantee's control. A written request for an extension must be submitted at least sixty (60) days prior to March 31, 2022.

2. Exhibit A-3 has been amended. Please refer to Amended Exhibit A-4, which is attached to the Contract and specifically incorporated herein by this reference. Amended Exhibit A-4 supersedes and replaces previous versions of Exhibit A; A-1; A-2; A-3 in their entirety.
3. All other provisions of the Contract remain in full force and effect.

CASACDE COUNTY:

James Larson, Commission Chair

Date

ATTEST:

Rina Fontana Moore, Clerk & Recorder

APPROVED AS TO FORM:

Carey Ann Haight, Attorney

MONTANA DEPARTMENT OF COMMERCE:

Adam Schafer, Deputy Director

Date

EXHIBIT A-4 Implementation Schedule

TASK	QUARTERS, 2020				QUARTERS, 2021			
	1st J F M	2nd A M J	3rd J A S	4th O N D	1st J F M	2nd A M J	3rd J A S	4th O N D
PROJECT DESIGN								
Commence Final Design			2019					
Complete Project Design				2019				
Submit Plans to DEQ				2019				
Prepare Bid Documents				2019				
Finalize Acquisition				NA				
ADVERTISEMENT FOR CONST. BID								
Review Contract Requirements			2019					
Public Bid Advertisement		X						
Open Bids & Examine Proposals		X						
Request Contr. Debarment Review		X						
Select Contractor & Award Bid			X					
Conduct Pre-Const. Conference			X					
Issue Notice to Proceed to Contractor			X					
PROJECT CONSTRUCTION								
Begin Construction				X				
Monitor Engineer & Contractor				X		X		
Conduct Labor Compliance Reviews				X		X		
Hold Const. Progress Meetings				X		X		
Final Inspection						X		
PROJECT CLOSE OUT								
Submit Final Drawdown							X	
Project Completion Report/Final Certification							X	
Contract End Date	2022							

CDD CONTRACT INFORMATION SHEET

Division staff are required to complete the items in blue print.

Date of Gov. Award Letter:	<u>7/12/2013</u>	Date Met StartUp Conditions:	<u>9/15/2016</u>
Contract Number:	<u>MT-CDBG-13HR-01D</u>	Division:	<u>CDD</u>
Contractor's Name:	<u>Cascade County</u>		
Additional Name:	<u>Mary Embleton</u>		
Additional Email:	<u>membleton@cascadecountymt.gov</u>		
Approved to Form Name:	<u>Carey Ann Haight</u>		
Approved to Form Email:	<u>chaight@cascadecountymt.gov</u>		
Contractor (Signee) Name:	<u>James Larson</u>		
Contractor's Email:	<u>jlarson@cascadecountymt.gov</u>		
Contractor's Address:	<u>325 2nd Ave N</u>		
	<u>Great Falls, MT 59401</u>		
Contractor's Address 2:		Vendor Number:	<u>23523</u>
Attest Name:	<u>Rina Fontana Moore</u>		
Attest Email:	<u>rmoore@cascadecountymt.gov</u>	Begin Date:	<u>7/12/2013</u>
Amount:	<u>\$450,000</u>		
Organization Number:	<u>606306</u>	End Date:	<u>3/31/2022</u>
RFP Number (if applicable):			
Program Number:	<u>60</u>		

Liaison:	<u>Jeanette Blize</u>	Program Manager:	<u>banseth@mt.gov</u>
Liaison Email:	<u>jblize@mt.gov</u>	Operations Manager:	<u>A.C. Rothenbuecher</u>
Liaison Phone:	<u>406-841-2782</u>	Additional Email:	
Signatures:		Carbon Copies:	
Division Administrator	<u>Jennifer Olson</u> 12/14/2020	Liaison:	<input checked="" type="checkbox"/>
Fiscal Review	<u>Heidi Sampson</u> 12/14/2020	Director (> \$25K):	<input checked="" type="checkbox"/>
Legal Counsel	<u>Jessica Blumberg</u> 12/14/2020	Deputy Director (<\$25K):	<input type="checkbox"/>
Deputy Director	<u>Adam Schafir</u> 12/15/2020	Perceptive Content	<input checked="" type="checkbox"/>
OBPP	<u>Amy Sassano</u> 12/15/2020		

\\entdoc0015\DivisionFiles\CDD\CDDShare\Division-wide\Contracts\Templates\Electronic contract routing form.xls

Certificate Of Completion

Envelope Id: 547AF7DEF79C4370AF540A8B4E7DF799
 Subject: Montana Department of Commerce Contract #MT-CDBG-13HR-01 for Signature
 Source Envelope:
 Document Pages: 4
 Certificate Pages: 6
 AutoNav: Enabled
 Envelope Stamping: Enabled
 Time Zone: (UTC-07:00) Mountain Time (US & Canada)

Status: Sent

Envelope Originator:
 Contracts Admin
 PO Box 200501
 301 S. Park Ave
 Helena, MT 596200501
 doccontracts@esign.mt.gov
 IP Address: 161.7.39.7

Record Tracking

Status: Original
 12/14/2020 11:25:16 AM

Holder: Contracts Admin
 doccontracts@esign.mt.gov

Location: DocuSign

Signer Events

Jennifer Olson
 jeolson@mt.gov
 Security Level: Email, Account Authentication
 (None)

Signature

Jennifer Olson

Signature Adoption: Pre-selected Style
 Using IP Address: 174.204.68.198
 Signed using mobile

Timestamp

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 Signed: 12/14/2020 11:50:08 AM

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Heidi Sampson
 hsampson@esign.mt.gov
 MT Dept of Commerce
 Security Level: Email, Account Authentication
 (None)

Heidi Sampson

Signature Adoption: Pre-selected Style
 Using IP Address: 161.7.98.63

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Electronic Record and Signature Disclosure:

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Jessica Blumberg
 Jessica.Blumberg@mt.gov
 Security Level: Email, Account Authentication
 (None)

Jessica Blumberg

Signature Adoption: Pre-selected Style
 Using IP Address: 161.7.110.212

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Electronic Record and Signature Disclosure:

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Adam Schafer
 adam.schafer@mt.gov
 Security Level: Email, Account Authentication
 (None)

Adam Schafer

Signature Adoption: Pre-selected Style
 Using IP Address: 161.7.104.106

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 Signed: 12/15/2020 9:33:29 AM

Electronic Record and Signature Disclosure:

Signer Events

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Amy Sassano
asassano@mt.gov
Deputy Budget Director
Security Level: Email, Account Authentication
(None)

Signature

Amy Sassano

Signature Adoption: Pre-selected Style
Using IP Address: 161.7.39.7

Timestamp

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Electronic Record and Signature Disclosure:

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Carey Haight
chaight@cascadecountymt.gov
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Sent: 12/15/2020 11:37:37 AM

James Larson
jlarson@cascadecountymt.gov
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Rina Fontana Moore
rmoore@cascadecountymt.gov
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Adam Schafer
adam.schafer@mt.gov
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
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In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp**

Becky Anseth
banseth@mt.gov
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

COPIED

Sent: 12/14/2020 11:34:19 AM

Carbon Copy Events

Jeanette Blize

jblize@mt.gov

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**
Not Offered via DocuSign

Mary Embleton

membleton@cascaedcountymt.gov

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**
Not Offered via DocuSign

Cyndi Davis

CDavis3@mt.gov

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**
Not Offered via DocuSign**Status****COPIED****Timestamp**

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Viewed: 12/15/2020 11:43:33 AM

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Envelope Sent

Hashed/Encrypted

12/14/2020 11:34:19 AM

Payment Events**Status****Timestamps****Electronic Record and Signature Disclosure**

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At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after signing session and, if you elect to create a DocuSign signer account, you may access them for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of a DocuSign envelope instead of signing it. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures

electronically from us.

How to contact MT Dept of Commerce:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: doccontracts@mt.gov

To advise MT Dept of Commerce of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at doccontracts@mt.gov and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc. to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in the DocuSign system.

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To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to doccontracts@mt.gov and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with MT Dept of Commerce

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to doccontracts@mt.gov and in the body of such request you must state your e-mail, full name, US Postal Address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows® 2000, Windows® XP, Windows Vista®; Mac OS® X
Browsers:	Final release versions of Internet Explorer® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari™ 3.0 or above (Mac only)
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	Allow per session cookies

** These minimum requirements are subject to change. If these requirements change, you will be asked to re-accept the disclosure. Pre-release (e.g. beta) versions of operating systems and browsers are not supported.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify MT Dept of Commerce as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by MT Dept of Commerce during the course of my relationship with you.

December 22, 2020

Agenda #1

Agenda Action Report
prepared for the
Cascade County Commission

ITEM: Montana ExpoPark Rodeo Barn Contract

INITIATED BY: Cascade County Public Works Department

ACTION REQUESTED: Approval of Award - Contract 20-209

PRESENTED BY: Les Payne, Public Works Director

BACKGROUND:

Cascade County sought sealed bids to remove and replace the existing roof and to repair and rebuild the existing windows, on the rodeo barn, located at the Montana ExpoPark, at 400 3rd St NW. The project was published in the Great Falls Tribune October 21, October 25 and November 1st, 2020. Sealed bids were only received from one vendor, WVH Enterprises LLC, of Great Falls, MT. Since this was the only vendor to bid and the lowest bidder, Cascade County and WVH Enterprises LLC, negotiated a price that was in the best interest to both parties involved.

RECOMMENDATION:

Cascade County Staff, recommends the commission approve the contract for WVH Enterprises LLC, to remove existing roof and install a new metal roof and to repair and rebuild existing windows, on the Rodeo Barn, located at the Montana ExpoPark, at 400 3rd St NW, for a total cost to the county of \$106,000.00.

TWO MOTIONS PROVIDED FOR CONSIDERATION

MOTION TO APPROVE:

"I move the Cascade County Commission **APPROVE** Contract 20-209, bid proposal for WVH Enterprises LLC, of Great Falls, MT, to remove the existing roof and install a new metal roof and to repair and rebuild existing windows, on the Rodeo Barn, located at the Montana ExpoPark, at 400 3rd St NW, for a total cost to the county of \$106,000.00."

MOTION TO DISAPPROVE:

"I move the Cascade County Commission **DISAPPROVE** Contract 20-209, bid proposal for WVH Enterprises LLC, of Great Falls, MT, to remove and install a new metal roof and to repair and rebuild existing windows, on the Rodeo Barn, located at the Montana ExpoPark, at 400 3rd St NW, for a total cost to the county of \$106,000.00."

AIA® Document A201® – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

MT ExpoPark Rodeo Barn

THE OWNER:

(Name, legal status and address)

Cascade County, Other

325 2nd Ave North

Great Falls MT 59401

Telephone Number: 406-454-6335

THE ARCHITECT:

(Name, legal status and address)

Nelson Architects, Limited Liability Company

621 2nd Ave North

Great Falls, MT 59401

Telephone Number: 406-727-3286

TABLE OF ARTICLES

- | | |
|----|--|
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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the

portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall

continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required

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submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop

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Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a

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party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed.

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However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

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§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon

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compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the

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Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract

Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in

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whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional

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insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

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§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be

sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

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ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

Additions and Deletions Report for **AIA® Document A201® – 2007**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 13:31:11 ET on 12/16/2020.

PAGE 1

MT ExpoPark Rodeo Barn

...

Cascade County, Other
325 2nd Ave North
Great Falls MT 59401
Telephone Number: 406-454-6335

...

Nelson Architects, Limited Liability Company
621 2nd Ave North
Great Falls, MT 59401
Telephone Number: 406-727-3286

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Dale Nelson, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:31:11 ET on 12/16/2020 under Order No. 4524598396 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the Fifteenth day of December in the year Twenty-Twenty
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Cascade County, Other
325 2nd Ave North
Great Falls MT 59401
Telephone Number: 406-454-6335

and the Contractor:
(Name, legal status, address and other information)

WVH Enterprises LLC
3405 18th Ave South
Great Falls, MT 59405

for the following Project:
(Name, location and detailed description)

MT ExpoPark Rodeo Barn
400 3rd St NW Great Falls, MT 59404

The Architect:
(Name, legal status, address and other information)

Nelson Architects, Limited Liability Company
621 2nd Ave North
Great Falls, MT 59401
Telephone Number: 406-727-3286

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- ☒ [X] The date of this Agreement.
- ☐ [] A date set forth in a notice to proceed issued by the Owner.
- ☐ [] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

Init.

[] Not later than () calendar days from the date of commencement of the Work.

[X] By the following date: June 15, 2021

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One Hundred and Six Thousand (\$ 106,000.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
NA	

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
NA		

§ 4.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

Item	Price
NA	

§ 4.4 Unit prices, if any:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
NA		

§ 4.5 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

NA

§ 4.6 Other:
(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

NA

Init.

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the Twenty-Fifth day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the Last day of the Next month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than Forty-five (45) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™-2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

5%

Init.

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

NA

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

NA

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

%

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

Init.

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2017

☒ Litigation in a court of competent jurisdiction

☐ Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

NA

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

(Name, address, email address, and other information)

Les Payne
Public Works Director
279 Vaughn S Frontage Road
Great Falls, MT 59404
lpayne@cascadecountymt.gov
406-788-0716

§ 8.3 The Contractor's representative:

(Name, address, email address, and other information)

Wylie Van Heel
WVH Enterprises, LLC

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

Init.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum,

(Paragraphs deleted)

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor

(Paragraphs deleted)

- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction

- .5 Drawings

Number	Title	Date
	MT ExpoPark Rodeo Barn	10/15/2020

- .6 Specifications

Section	Title	Date	Pages
	MT ExpoPark Rodeo Barn	10/15/2020	139

- .7 Addenda, if any:

Number	Date	Pages
NA		

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

(Paragraphs deleted)

(Table deleted)

(Table deleted)

(Paragraph deleted)

(Paragraphs deleted) This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*

(Printed name and title)

CONTRACTOR *(Signature)*

Wylie Van Heel

(Printed name and title)

Init.

Additions and Deletions Report for

AIA® Document A101® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

AGREEMENT made as of the Fifteenth day of December in the year Twenty-Twenty

...

Cascade County, Other
325 2nd Ave North
Great Falls MT 59401
Telephone Number: 406-454-6335

...

WVH Enterprises LLC
3405 18th Ave South
Great Falls, MT 59405

...

MT ExpoPark Rodeo Barn
400 3rd St NW Great Falls, MT 59404

...

Nelson Architects, Limited Liability Company
621 2nd Ave North
Great Falls, MT 59401
Telephone Number: 406-727-3286

PAGE 2

[☒] The date of this Agreement.

PAGE 3

[☒] By the following date: June 15, 2021

...

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One Hundred and Six Thousand (\$ 106,000.00), subject to additions and deductions as provided in the Contract Documents.

...

NA

...

NA

...

NA

...

NA

...

NA

...

NA
PAGE 4

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the Twenty-Fifth day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the Last day of the Next month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than Forty-five (45) days after the Architect receives the Application for Payment.

...

5%
PAGE 5

NA

...

NA
PAGE 6

☒ [X] Litigation in a court of competent jurisdiction

...

NA

...

Les Payne
Public Works Director
279 Vaughn S Frontage Road
Great Falls, MT 59404
lpayne@cascadecountymt.gov
406-788-0716

...

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 8.7 Other provisions:

...

- ~~2~~ AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- ~~3~~ AIA Document A201™-2017, General Conditions of the Contract for Construction
- ~~4~~ AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

...

MT ExpoPark Rodeo 10/15/2020
Barn

...

MT ExpoPark Rodeo 10/15/2020 139
Barn

...

NA

...

- ~~8~~ Other Exhibits:
(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

☐ AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:

(Insert the date of the E204 2017 incorporated into this Agreement.)

☐ The Sustainability Plan:

Title	Date	Pages
-------	------	-------

☐ Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

~~9~~ Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™ 2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

This Agreement entered into as of the day and year first written above.

...

Wylie Van Heel

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Dale Nelson, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:28:26 ET on 12/16/2020 under Order No. 4524598396 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



December 16, 2020

Les Payne
Public Works Director
Cascade County
279 Vaughan S. Frontage Road
Great Falls, MT 59404

Mr. Payne,

I recommend awarding WVH Enterprises LLC the contract for the MT ExpoPark Rodeo Barn project for the base bid amount of \$106,000.00.

Thank you.

Scott Keller,
Construction Administrator
Nelson Architects

BID PROPOSAL FOR GENERAL CONSTRUCTION
MT ExpoPark Rodeo Barn
Great Falls, MT

As the Undersigned, I have familiarized myself with the conditions of the Work and Contract Documents prepared by Nelson Architects, Great Falls, Montana, and agreed to furnish all labor, material, equipment and services necessary to complete the MT ExpoPark Rodeo Barn, Great Falls, MT in accordance with the Contract Documents, including all addenda.

I have received the Project Manual and Drawings, the latter consisting of 7 total sheets.

I have received Addenda Nos. N/A and have included their provisions in my Bid, agreeing to:

1. Hold my bid open for sixty (60) days after opening of Bid. I am providing a bid bond in the amount of one hundred (10%) of my bid.
2. Accept the provisions of the Instructions to Bidders regarding disposition of my Bid Security, attached hereto.
3. Enter into and execute a Contract, if awarded on the basis of this Bid, and to furnish required Performance Bond, Labor-Material Payment Bond, and Insurance in specified amounts.
4. Accomplish the Work in accordance with the Contract Documents.

BASE BID

I agree to complete all Work for the **Basic Bid lump sum** of
One-hundred & six thousand Dollars (\$ 106,000.00).

Date: 12/15, 2020.

Business Name: _____

WVH Enterprises LLC

Business Address: _____

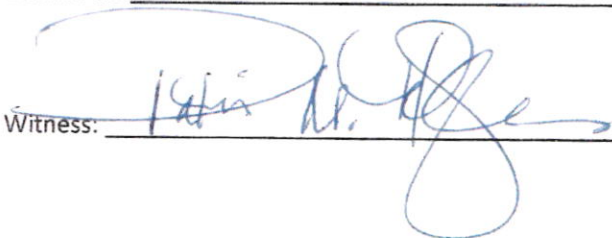
3405 18th Ave South

Great Falls MT 59405

By: Wylie Van Heel



License No. 222139



Witness: _____

December 22, 2020

Agenda #2

Agenda Action Report
Prepared for the
Cascade County Commission

ITEM:

Ordinance 21-01: (1st Reading)

An Ordinance establishing procedure in Cascade County for selection of the presiding officer of the Cascade County Board of Commissioners.

PRESENTED BY:

Joe Briggs, Cascade County Commissioner

ACTION REQUESTED:

Approve: Ordinance 21-01

BACKGROUND:

Pursuant to MCA Section 7-3-401, Cascade County has an elected commission form of government. Further, pursuant to MCA Section 7-3-111, Cascade County is required as an elected form of government to follow MCA Section 7-3-414 in electing a Presiding Officer of its Board of County Commissioners. MCA Section 7-3-414 also states that the members of the commission must select a presiding officer in one of three ways, which includes being elected by the members of the commission for a term established by ordinance and selection as provided by ordinance.

The Board of Cascade County Commissioners adopted Ordinance 09-01 in 2009 which provided that the Commission will hold an election to select a Presiding Officer at its first meeting in odd-numbered years, and that the Presiding Officers' term shall be two (2) years.

In January of 2012, the commission passed Ordinance 12-01 which rescinded Ordinance 09-01 and established a pattern whereby the presiding officer term was shortened to a single year and the position of presiding officer rotated every January with the Commissioner serving in the 3rd and 6th year of their term being the presiding officer.

This annual turnover creates confusion with our granting and other governmental partners as documents created by these partners often cite the wrong presiding officer. Additionally, since the presiding officer is also deemed to be the certifying environmental officer, the annual turnover causes many projects to require a change of environmental certifying officer to occur in mid project when the presiding officer is changed in January.

The Commission would like to adopt a process whereby each member of the Commission will serve as Presiding Officer during the fifth and sixth year of their term of office. It is also the sense of the Commission that if this procedure cannot be followed because of shortened terms, the members of the commission will elect a member from their own number for a one-year term.

This ordinance change would retain the automatic rotation of the commissioners through the presiding officer position but would minimize the disruptive effects of changing the presiding officer every year by extending the term back to two years as it was prior to 2012.

It would also allow newly elected commissioners an opportunity to work within the system for four years under normal situations prior to being required to assume the presiding officer position.

December 22, 2020

Agenda #2

This is of particular importance given the resignation of Commissioner Weber. Her replacement would, under a strict interpretation of the existing ordinance immediately become presiding officer following their appointment to the commission. The change in ordinance would even under this midterm resignation scenario allow the new Commissioner two years of experience prior to becoming the presiding officer.

RECOMMENDATION:

It is recommended the Cascade County Commission approve Ordinance 21-01.

TWO MOTIONS PROVIDED FOR CONSIDERATION:

MOTION TO APPROVE:

"Mr. Chairman, I move the Cascade County Commission **APPROVE** Ordinance 21-01, an Ordinance establishing procedure in Cascade County for selection of the presiding officer of the Cascade County Board of Commissioners." "

MOTION TO DISAPPROVE:

Mr. Chairman, I move the Cascade County Commission **DISAPPROVE** Ordinance 21-01, an Ordinance establishing procedure in Cascade County for selection of the presiding officer of the Cascade County Board of Commissioners."

**AN ORDINANCE ESTABLISHING PROCEDURE IN CASCADE COUNTY
FOR SELECTION OF THE PRESIDING OFFICER OF THE
CASCADE COUNTY BOARD OF COMMISSIONERS**

WHEREAS, pursuant to MCA Section 7-3-401, Cascade County has an elected commission form of government, and

WHEREAS, under MCA Section 7-3-111, Cascade County is required as an elected form of government to follow MCA Section 7-3-414(1) in electing a Presiding Officer of its Board of County Commissioners, and

WHEREAS, MCA Section 7-3-414(1) states that the members of the commission must select a presiding officer in one of three ways, and

WHEREAS, County Ordinance 12-01, R0247337 provides a process whereby each member of the Commission will serve as Presiding Officer during the third and sixth year of their term of office, and

WHEREAS, the current annual rotation creates some issues with the grant cycle and also disrupts the timing of the Chairman serving on the Policy Coordination Committee of the Metro Transportation District, and

WHEREAS, the Commission would like to adopt a process whereby each member of the Commission will serve as Presiding Officer during the fifth and sixth year of their term of office. It is also the desire of the Commission that if this procedure cannot be followed because of shortened terms, the members of the commission will elect a member from their own number for a one-year term.

WHEREAS, County Ordinance 12-01, R0247337 describes a rotation of presiding officer which conflicts with this proposed ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COMMISSION
OF CASCADE COUNTY, STATE OF MONTANA:**

The Cascade County Ordinance 12-01, R0247337 is hereby rescinded and replaced by this ordinance.

That each member of the Commission will serve as the Presiding Officer during the fifth and sixth year of their term of office. If this procedure cannot be followed because of shortened terms, the members of the commission will elect a member from their own number for a one-year term.

Passed on first reading this 22nd day of December, 2020 by the Board of Cascade County Commissioners, Cascade County, State of Montana.

**BOARD OF COUNTY COMMISSIONERS
CASCADE COUNTY**

James L. Larson, Chairman

Jane Weber, Commissioner

Joe Briggs, Commissioner

ATTESTED this _____ day of _____, 2020

Rina Fontana Moore, Cascade County Clerk & Recorder

Passed on the second and final reading this 26th day of January, 2021 by the Board of Cascade County Commissioners, Cascade County, State of Montana.

**BOARD OF COUNTY COMMISSIONERS
CASCADE COUNTY**

James L. Larson, Chairman

Jane Weber, Commissioner

Joe Briggs, Commissioner

Attest

On this _____ day of _____, 2020, I hereby attest the above-written signatures of the Board of Cascade County Commissioners.

Rina Fontana Moore, Cascade County Clerk & Recorder

* APPROVED AS TO FORM:

Josh Racki, County Attorney

Deputy County Attorney

* THE COUNTY ATTORNEY HAS PROVIDED ADVICE AND APPROVAL OF THE FOREGOING DOCUMENT LANGUAGE ON BEHALF OF THE BOARD OF CASCADE COUNTY COMMISSIONERS, AND NOT ON BEHALF OF OTHER PARTIES OR ENTITIES. REVIEW AND APPROVAL OF THIS DOCUMENT BY THE COUNTY ATTORNEY WAS CONDUCTED SOLELY FROM A LEGAL PERSPECTIVE AND FOR THE EXCLUSIVE BENEFIT OF CASCADE COUNTY. OTHER PARTIES SHOULD NOT RELY ON THIS APPROVAL AND SHOULD SEEK REVIEW AND APPROVAL BY THEIR OWN RESPECTIVE COUNSEL.

Agenda Action Report
Prepared for the
Cascade County Commission

ITEM: **An Ordinance Prohibiting the Carrying and Possession of Weapons of Weapon Under Certain Circumstances, Pursuant to MCA § 45-8-351 (2019)**

INITIATED AND PRESENTED BY: **Carey Ann Haight, Deputy County Attorney**

ACTION REQUESTED: **Approval of Ordinance 21-02**

BACKGROUND:

In Montana, a simple majority is required in both chambers of the state legislature to place a legislatively referred state statute on the ballot.

This measure was introduced as House Bill 357 on January 25, 2019, by Representatives Matt Regier (R-4) and Derek Skees (R-11). On February 21, 2019, the House passed the bill in a vote of 56 to 43, largely along party lines. The measure passed in the Senate on April 2, 2019, by a vote of 28 to 21.

This legislatively referred statute was designed to be sent to voters if Montana's Democratic governor, Steve Bullock, vetoed House Bill 325, an identical bill. Bullock vetoed House Bill 325 on May 3, 2019. Section 5 of Article III of the Montana Constitution, along with Montana Code 5-4-301, provides that the governor cannot veto legislatively referred state statutes or stop them from appearing on the ballot.

LR-130 was approved by the voters in November and becomes effective on January 1, 2021. It generally restricts a county, city, town, consolidated local government, or other local government unit's authority to regulate the carrying of firearms. It removes a local government unit's power to regulate the carrying of permitted concealed weapons or to restrict the carrying of unconcealed firearms except in publicly owned and occupied buildings under the local government unit's jurisdiction. It repeals a local government unit's authority to prevent or suppress the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors although federal and other state firearm restrictions remain unchanged, including for these individuals.

Local firearm ordinances that conflict with LR-130 cannot not be enforced. Consequently, the Cascade County Attorney's Office has prepared a revised weapons ordinance which is in compliance with LR-130 for adoption by the Board of Cascade County Commissioners, which will also supersede and replace previous Cascade County weapons Resolutions 95-22 and 95-22A as well as Ordinance 3.

Ordinance 3 prohibits the carrying of concealed and unconcealed weapons to, at or on the following places and premises:

- a) Any public assembly located within Cascade County, including but not limited to formal judicial proceedings;
- b) Any park under the jurisdiction of Cascade County; and
- c) Any school within Cascade County.

Agenda Action Report

(continued)

It also prohibits the possession of a firearm by persons adjudicated mental incompetents and illegal aliens.

As LR-130 no longer authorized local governments to restrict such activities and persons, concealed and unconcealed weapons in public assemblies, parks, and schools and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors may no longer be restricted by ordinance by the Board of Cascade County Commissioners.

RECOMMENDATION: Approval of Ordinance 21-20.

TWO MOTIONS PROVIDED FOR CONSIDERATION:

MOTION TO APPROVE:

“Mr. Chair, I move that the Commission **APPROVE** Ordinance 21-20, an Ordinance Prohibiting the carrying and possession of weapons under certain circumstances, pursuant to MCA § 45-8-351 (2019).”

MOTION TO DISAPPROVE:

Mr. Chair, I move that the Commission **DISAPPROVE** Ordinance 21-20, an Ordinance Prohibiting the carrying and possession of weapons under certain circumstances, pursuant to MCA § 45-8-351 (2019).”

**BEFORE THE BOARD OF COMMISSIONERS
CASCADE COUNTY, MONTANA**

ORDINANCE 21-02

**IN THE MATTER OF ENACTING AN ORDINANCE PROHIBITING
THE CARRYING AND POSSESSION OF WEAPONS UNDER CERTAIN
CIRCUMSTANCES, PURSUANT TO MCA § 45-8-351 (2019)**

WHEREAS, in the interest of public safety, the Board of Cascade County Commissioners has previously passed Ordinance No. 3, and Resolution Nos. 95-22, and 95-22A prohibiting and suppressing the carrying and possession of weapons, pursuant to Mont. Code Ann. § 45-8-351 (1993); and of the carrying of a concealed or unconcealed weapon to, at, or on the premises of certain enumerated locations within Cascade County;

WHEREAS, Mont. Code Ann. § 7-5-103(3) (2019), requires that, prior to enactment, all country ordinances must be read and adopted by a majority vote of members present at two (2) meetings of the board of County Commissioners, not less than 12 days apart;

WHEREAS, Mont. Code Ann. § 7-5-109(1) (2019), authorizes Cascade County to fix a penalty for the violation of an ordinance in the form of a fine that does not exceed \$500.00, imprisonment in the county jail for a period not to exceed 6 months, or both;

WHEREAS, the Board of Cascade County Commissioners concurs with the opinions of the Cascade County Sheriff and the Cascade County Attorney that a misdemeanor penalty is necessary to ensure adequate enforcement of this ordinance;

WHEREAS, due to the recent passage of Montana LR-130, it is necessary for the Board of Cascade County Commissioners to pass the within Ordinance which shall supplant, replace and supersede Cascade County Ordinance No.3 and Resolutions 95-22 and 95-22A;

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of Cascade County Commissioners that the Board hereby enacts the following ordinance, pursuant to Mont. Code Ann. §§ 45-8-351, 7-5-103, and 7-5-109 (2019), et seq., (2019), and as such statutes may hereafter be amended:

- (1) Cascade County Ordinance #3, Resolutions 95-22 and 95-22A are hereby rescinded and replaced by this Ordinance.
- (2) Pursuant to Mont. Code Ann. § 45-8-351 (2) (2019), and except as provided by Mont. Code Ann. § 45-8-317 (2019), the carrying of unpermitted concealed weapons or carrying of unconcealed weapon in the following places is hereby prohibited:
 - a) Any publicly owned and occupied building under Cascade County jurisdiction, including but not limited to the Cascade County Courthouse, Cascade County Courthouse Annex, Executive Plaza, Health Department and ExpoPark facilities;
- (3) For purposes of this ordinance, the term "weapon" shall mean any firearm; electronic stun-gun; dirk; dagger; slingshot; sword cane; billy; knuckles made of any metal or hard substance; knife having a blade 4 inches or longer; razor, not including a safety razor; or any other "weapon," as currently defined by Mont. Code Ann. § 45-2-101 (79) (2019), and as such statute may hereafter be amended;

ORDINANCE 21-02

- (4) For purposes of this ordinance, the term “firearm” shall include, but is not limited to, any gun, rifle, pistol, shotgun, handgun, or other similar device designed or used to propel a projectile by the use of burnt powder or other chemical means;
- (5) For purposes of this ordinance, the term “concealed weapon” shall have the same definition as set forth in Mont. Code Ann. § 45-8-315 (2019), and as such statute may hereafter be amended;
- (6) For purposes of this ordinance, the term “unpermitted” shall mean (1) a person who has not been granted a permit to carry a concealed weapon as set forth in Mont. Code Ann. § 45-8-321; (2) a person who does not qualify under the exceptions set forth in Mont. Code Ann. § 45-8-317 (2019); or (3) a person who does not have a permit from another State recognized as a valid permit to carry a concealed weapon in Cascade County as set forth in Mont. Code Ann. § 45-8-329 (2019), and as such statutes may hereafter be amended;
- (7) A person convicted of violating this ordinance shall be punishable by a fine in an amount not to exceed \$500.00, or be imprisoned in the county jail for a period not to exceed 6 months, or both.

FURTHER, IT IS HEREBY RESOLVED that, pursuant to Mont. Code Ann. § 7-5-103 (1) (2019) the above-enacted ordinance shall be effective thirty (30) days from the date of the second reading and final adoption of this ordinance.

Passed on first reading this **22nd** day of **December, 2020** by the Board of Cascade County Commissioners, Cascade County, State of Montana.

**BOARD OF COUNTY COMMISSIONERS,
CASCADE COUNTY, MT**

James L. Larson, Chairman

Jane Weber, Commissioner

Joe Briggs, Commissioner

ATTESTED this ____ day of _____, 2020

Rina Fontana Moore, Cascade County Clerk & Recorder

ORDINANCE 21-02

Passed on the second and final reading this ____ day of _____, 2021 by the Board of Cascade County Commissioners, Cascade County, State of Montana.

**BOARD OF COUNTY COMMISSIONERS,
CASCADE COUNTY, MT**

James L. Larson, Chairman

Jane Weber, Commissioner

Joe Briggs, Commissioner

ATTESTED this ____ day of _____, 2021

Rina Fontana Moore, Cascade County Clerk & Recorder

* APPROVED AS TO FORM:
Josh Racki, County Attorney

DEPUTY COUNTY ATTORNEY

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